



د افغانستان روڼتيا څار  
INTEGRITY WATCH AFGHANISTAN

 **TRANSPARENCY  
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the global coalition against corruption

# NATIONAL INTEGRITY SYSTEM ASSESSMENT AFGHANISTAN 2015



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committed to increasing transparency, accountability and integrity  
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# ACRONYMS

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AACN	Afghan Anti-Corruption Network
ABL	Afghanistan Banking Law
ABP	Afghan Border Police
ACA	Anti-Corruption Agency
ACBAR	Agency Coordinating Body for Afghan Relief and Development
ACCI	Afghanistan Chamber of Commerce and Industries
ACCN	Afghan Anti-Corruption Network
ACSFo	Afghan Civil Society Forum-organization
ACSI	Afghan Civil Services Institute
ACSL	Afghanistan Civil Service Law
ACTA	Afghan Coalition for Transparency and Accountability
ADS	Assets Declaration Strategy
AFCAC	Afghans Coordination Against Corruption
AFN	Afghani (Referring to currency)
AGO	Attorney General's Office
AHAL	Audit High Administration Law
AIB	Afghanistan International Bank
AIHRC	Afghanistan Independent Human Rights Commission
AISA	Afghanistan Private Investment Support Agency
AJF	Afghanistan Journalists' Federation
AJO	Afghan Justice Organization
AJSC	Afghan Journalists Safety Committee
AL	The Associations Law
ALP	Afghan Local Police
ANCB	Afghan NGOs Coordination Bureau

ANCOP	Afghan National Civil Order Police
ANJU	Afghanistan's National Journalists Union
ANP	Afghan National Police
APAP	Afghanistan Parliamentary Assistance Project
ARD	Asset Registration Department
ARDS	Afghanistan Reconstruction and Development Services
ASMED	Afghanistan Small and Medium Enterprise Development
AWCC	Afghan Wireless Telecommunication Company
AWN	Afghan Women Network
BBC	British Broadcasting Corporation
BHC	Budget Hearing Committee
BSA	Bilateral Security Agreement
CCSS	Code of Conduct of Civil Servants
CDR	Commission of Dispute Resolution
CEO	Chief Executive Officer
CMO	Contract Management Office
CMS	Case Management System
CSCC	Civil Servants Code of Conduct
CSHRN	Civil Society and Human Rights Network
CSL	Civil Servants Law
CSOs	Civil Society Organizations
CSR	Corporate Social Responsibility
CSTC-A	Combined Security Transition Command–Afghanistan
DAB	Da Afghanistan Bank
DFID	Department for International Development
EBC	Evaluation of Bids Committee
EL	Election Law
EPD	Equality for Peace and Development

EU	European Union
EUPOL	European Union Police Mission in Afghanistan
FEFA	Free and Fair Election Forum of Afghanistan
GDARS	General Directorate of Administrative Reform Secretariat
GDRPPSA	General Department of Registration of Political Parties and Social Associations
GI	The General Inspection
GIAAC	General Independent Administration Against Corruption
GIZ	Deutsche Gesellschaft für Internationale Zusammenarbeit
HCM	High Council of Media
Hizb	Hizb-e Islami
HOO	High Officer of Oversight
HOOAC	High Office of Oversight and Anti-Corruption
IAQCD	Internal Audit and Quality Control Directorate
IARCSC	Independent Administrative Reform and Civil Services Commission
ICRC	International Committee of Red Cross
IDLO	International Development Law Organization
IEC	Independent Election Commission
IECC	Independent Electoral Complaints Commission
IFRS	International Financial Reporting Standards
IG	Inspector General
IIPEC	Institut International Pour les Etudes Comparatives
IMC	Independent Media Consortium
INGO	International Non-Governmental Organizations
INL	Bureau for International Narcotics and Law Enforcement Affairs
INTOSAI	International Organization of Supreme Audit Institutions
IPRs	Intellectual Property Rights
IRA	Institutional Risk Analysis
ISSAI	International Standards for Supreme Audit Institutions



ITL	Income Tax Law
IWA	Integrity Watch Afghanistan
Jamiat	Jamiat-e Islami
JEMB	Joint Electoral Management Body
JSSP	Justice Sector Support Programme
Junbish	Junbish Mili-e Islami Afghanistan
LAI	Law on Access to Information
LBCLLC	Law on Business Corporations and Limited Liability Companies
LCCSP	Commercial Contracts and Selling Property
LEA	Law Enforcement Agencies
LIBOR	LIBOR is the average interbank interest rate at which a selection of banks on the London money market are prepared to lend to one another.
LLCs	Limited Liability Companies
LODAIEC	Law on the Organization, Duties and Authorities of Independent Election Commission
LOIACS	Law on Overseeing the Implementation of the Administrative Anti-Corruption Strategy
LOTFA	Law and Order Trust Fund for Afghanistan
LPC	Law on Penal Code
LRTS	Law on Regulation of Telecommunication Services
LSA	Law on Structure and Authority
LSCC	Law on the Structure and Competencies of Courts
LSIACS	Law on Supervision and Implementation of Anti-Corruption Strategy
LSRACAR	Law on Supporting the Rights of Authors, Composers, Artists, and Researchers
LTMR	Law on Trade Marks Registration
MAIL	Ministry of Agriculture, Irrigation and Livestock
MEC	Independent Joint Anti-Corruption Monitoring and Evaluation Committee
MMC	Mass Media Commission
MML	Mass Media law

MoCI	Ministry of Commerce and Industries
MoCIT	Ministry of Communications and Information Technology
MoD	Ministry of Defence
MoEW	Ministry of Energy and Water
MoF	Ministry of Finance
MoIA	Ministry of Interior Affairs
MoJ	Ministry of Justice
MoPH	Ministry of Public Health
MoPW	Ministry of Public Work
MoSPA	Ministry of State for Parliamentary Affairs
MoUD	Ministry of Urban Development
MP	Member of Parliament
MPED	Media and Public Education Directorate
MVIC	Media Violation Investigation Commission
NATO	North Atlantic Treaty Organization
NDI	National Democratic Institute
NGOs	Non-Governmental Organizations
NIS	National Integrity System
NPA	National Procurement Authority
NTM-A	NATO Training Mission–Afghanistan
NUG	National Unity Government
OAACMS	Office of Administrative Affairs and Council of Ministers Secretariats
OAACoMS	Office of Administrative Affairs and Council of Ministers Secretariat
OSCE	Organization for Security and Cooperation in Europe
PAC	Public Account Committee
PEAD	Public Enterprises Audit Department
PEOs	Provincial Electoral Officers
PERL	Patent (Inventions) and Explorer Rights Law

PFELM	Public Finance and Expenditure Management Law
PIL	Private Investment Law
PPU	Public Procurement Unit
RJP	Right and Justice Party
RMAE	Regulation on Media Activities during Elections
RMCF	Regulation on Managing Campaign Finance
RMCF	Regulation on Managing Campaign Finance
RTESR	Regulation on Temporary Electoral Staff Recruitment
SAO	Supreme Audit Office
SEAL	Support for Establishment of Afghanistan Legislature
SIGAR	Special Investigator General for Afghanistan Reconstruction
SMEs	Small and Medium Enterprises
SNTV	Single Non-Transferable Vote
SPC	Special Procurement Commission
SRCDA Co	Construction & Supplier, Security Services & Transportation Co. Ltd.
UNAMA	United Nations Assistance Mission in Afghanistan
UNCAC	United Nations Convention Against Corruption
UNDP	United Nations Development Programme
UNIFEM	United Nations Development Fund for Women
UNODC	United Nation Organization for Drug and Crimes
USAID	United States Agency for International Development
US\$	United States Dollar
VOA	Voice of America
Wahdat	Wahdat Islami Mardum Afghanistan

# GLOSSARY

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Da Afghanistan Bank	Afghanistan Central Bank
Da Mashrano Jirga	Upper House
Diwan(s)	Court(s)
HARAKAT	Afghanistan Investment Climate Facility Organization
Jereeb	1/5 of an hectare
Jirga	Council of Elders and Wise
Kochies	Nomads
Loya Jirga	Grand Assembly
Qatia	Public Accounts
Religio-fiqh	Difference if schools in religion
Riba	Interest
Sal Nama Qaza	Judiciary's Yearly Report
Setaz Qazayee	Judicial Training Course
Shafafeyat	Transparency
Shura	Council of the Ulama and Wise
Shura-e-Aali Stera Makama	High Council of Supreme Court
Teb Adli	Coroner
Tsaranwali	Attorney
Tsaranwali	Attorney Office
Ulama	Religious Leaders
Wakeel	Advocate
Wolesi Jirga	Lower House



# I. FOREWORD

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The future of Afghanistan as a viable democratic state, capable of providing security and a foundation for its people to prosper, is increasingly being eroded by the growth of corruption. While substantial financial resources have been showered on Afghanistan by the international community over the past 14 years to assist the country to strengthen its military, executive, judicial, legislative, law enforcement and civil institutions, the effectiveness of such institutions has been significantly eroded by a lack of integrity, accountability, and transparency. A sizeable proportion of the Afghan population has lost confidence in their government's ability to work in the interest of the broader public, rather than in the interests of a small group of warlords and other political elites. Such a loss of confidence in state institutions is dangerous for the sustainability of the government and for the ultimate survival of the nation. Afghanistan is a country at war and if it loses the confidence and support of its people, it will have no chance to win that war. The alleviation of corruption is no longer just a desirable objective; it is a strategic imperative.

There is nothing more likely to cause a government to lose the support of the people they govern than for those people to be subject, year after year, to ineffective and corrupt institutions. The principal institutions of the Afghan government require considerable reform and further capacity development. More important, however, is the need for the government to demonstrate a serious degree of political will to address corruption throughout all of the institutions of state. The time has passed when the mere "ticking of boxes" (setting up ineffective institutions or passing laws which are not enforced) by the government will suffice. Afghanistan is approaching the end game; time is something which the government, and the country, no longer has. Setting up an institution such as the High Office of Oversight and Anti-Corruption (HOOAC) alone is not sufficient if such an institution is not effective, is not pressured by the government to produce results and is not supported by other institutions of state.

It is for the above reasons that this first National Integrity System Assessment of Afghanistan is so critical. It is important for the Afghan government, parliament, civil society and the international community to understand where precisely the institutional weaknesses and failings are and to identify priorities for reform. Whether these are acted upon, however, will be up to the Afghan government.



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## II. EXECUTIVE SUMMARY

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At the beginning of 2016, Afghanistan stands at a critical juncture that will determine its future as a country. The new democratically-elected government has taken power against a backdrop of withdrawing international forces and recent reports of a worsening security situation in the country<sup>1</sup>. While the immediate prospects for peace remain unclear, what is certain is that long term stability cannot be secured unless a sustained effort is made to tackle corruption in the country. Experience from post-conflict countries around the world shows that widespread corruption undermines the authority of the state and its institutions and provides fertile ground for criminal networks to develop and insurgents to operate. Corruption also deprives the poor and vulnerable of essential services and limits their access to justice. By weakening the bonds of trust between citizens and the state, it heightens the risk of conflict reemerging<sup>2</sup>.

This is a real concern for Afghanistan, a country which in 2015 ranked 166 out of 168 countries on Transparency International's Corruption Perceptions Index<sup>4</sup> and where 90% of citizens say that corruption is a problem in their daily lives<sup>5</sup>.

The new government has made clear its commitment to fighting corruption through a comprehensive reform agenda<sup>6</sup>. To support these efforts, Transparency International and Integrity Watch Afghanistan have conducted in-depth research to establish a complete picture of the country's institutional landscape with regard to integrity, accountability and transparency. This report represents an important milestone. For the first time, there is a study that covers all branches of government, the public and private sectors, the media, and civil society to analyse the vulnerabilities of Afghanistan to corruption as well as the effectiveness of its national anti-corruption efforts. Crucially, the assessment was carried out in close consultation with the key anti-corruption actors from government, civil

### The National Integrity System Approach

The National Integrity System assessment approach<sup>3</sup> provides a framework to analyse the robustness and effectiveness of a country's institutions in preventing and fighting corruption. The concept has been developed and promoted by Transparency International as part of its holistic approach to countering corruption and has been applied in more than 100 countries around the world. When the institutions and sectors that make up the National Integrity System work together effectively, they allow the anti-corruption system to run smoothly. When one or more of the institutions is particularly weak, cracks appear, allowing corruption to seep into the system.

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<sup>1</sup> The Guardian. "Afghanistan's overall security weakened in second half of 2015, Pentagon says." *The Guardian*, 15 December 2015 <http://www.theguardian.com/world/2015/dec/15/afghanistan-security-taliban-pentagon-report-2015>

<sup>2</sup> Transparency International Deutschland. "Corruption as a Threat to Stability and Peace", *TI Deutschland*, 2014

<sup>3</sup> See Chapter VII: About the National Integrity System Assessment for more details

<sup>4</sup> Transparency International. "Corruption Perceptions Index 2015", *Transparency International*, 2016

<sup>5</sup> Asia Foundation. "Afghanistan in 2015: A Survey of the Afghan People", *Asia Foundation*, 2015

<sup>6</sup> Government of Afghanistan. "Self-Reliance through Mutual Accountability Framework (SMAF)", 2015

society and other relevant sectors. It aims to serve as a springboard for much needed anti-corruption reform in the country.

## KEY FINDINGS

The corrupt enjoy impunity thanks to a dysfunctional law enforcement and judicial system.

One of the most critical problems facing Afghanistan is the fact that those in positions of both formal and informal power assert strong influence over law enforcement and judicial authorities, allowing them to act with impunity. There are allegations that some government officials, members of parliament and other powerful actors use law enforcement agencies to serve their own interests by blocking investigations involving their associates and by interfering in the appointment procedures for important positions within these bodies<sup>7</sup>. Non-meritocratic appointments have undermined the accountability of the police in particular, and weakened public trust in the police<sup>8</sup>. Such external interference is exacerbated by the highly insecure environment in which law enforcement agencies operate, with 13 prosecutors having lost their lives in the course of their duties in the past two years alone<sup>9</sup>.

Afghanistan's anti-corruption agency, the High Office for Oversight and Anti-Corruption (HOOAC) has also proven to be ineffective in the fight against corruption<sup>10</sup>, and the new government removed its investigative and prosecutorial powers in 2015. While the HOOAC had previously initiated a number of high profile corruption cases, most of these were believed to be politically-motivated. A lack of cooperation and political infighting between the HOOAC and the Attorney General's office further contributed to a lack of tangible results in terms of corruption prosecution<sup>11</sup>.

The judiciary, meanwhile, is perceived by citizens to be the most corrupt institution in the country<sup>12</sup>. This is despite extensive judicial reform efforts over recent years including significant increases in judges' salaries. The judiciary is seen as being manipulated by both the government and parliament with judicial decisions frequently biased in their favour. Attempts to limit such interference are hindered by the fact that the Afghan judicial system lacks an independent Judicial Services Commission tasked with overseeing the operations of the judiciary. Instead it is the Supreme Court, whose members are appointed by the President on approval of parliament, which has the authority to appoint, remove and transfer judges. This brings into question the fundamental principle of separation of powers<sup>13</sup>.

The overall result is a dysfunctional justice system in which corruption largely goes unpunished<sup>14</sup>. It also leads citizens to seek justice elsewhere: Less than half of victims who report incidents of

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<sup>7</sup> See Chapter V.5: Law Enforcement Agencies

<sup>8</sup> Integrity Watch Afghanistan. "Senior Appointments and Corruption within the Afghan Mol: practices and perceptions", IWA, 2015

<sup>9</sup> See Chapter V.5: Law Enforcement Agencies.

<sup>10</sup> See Chapter V.8: Anti-Corruption Agency

<sup>11</sup> See Chapter V.8: Anti-Corruption Agency

<sup>12</sup> Transparency International. "Global Corruption Barometer", 71, 2013

<sup>13</sup> See Chapter V.3: Judiciary

<sup>14</sup> See Chapter V.3: Judiciary

violence or crime, report them to the police<sup>15</sup>, further undermining the legitimacy of the already fragile state.

## Political interference has undermined the ability of the public sector to deliver basic services to citizens.

Afghanistan's public sector is failing to adequately deliver essential services to its citizens. This is partly caused by the highly centralized system of administration, whereby the allocation of state resources is decided through a lengthy bureaucratic procedure with frequent delays. But it is also the result of widespread corruption across the public sector and a systematic failure to ensure merit based recruitment of civil servants, contributing to a dearth of adequate skills to deliver services to the public<sup>16</sup>. Specifically, the Independent Administrative Reform and Civil Services Commission (IARCSC) responsible for overseeing the work of the public sector, has been criticized for not preventing political interference in the recruitment of civil servants especially by some members of parliament and ministers<sup>17</sup>. Indeed after a change in government, the reassignment and removal of senior civil servants based on political considerations is believed to be common practice in Afghanistan<sup>18</sup>.

Of particular concern is the fact that such practices are not widely rejected by Afghan citizens: Two thirds of people consider the recruitment of civil servants on the basis of family and friendship ties to be acceptable<sup>19</sup>, while almost a quarter state that they would resort to nepotism if it were necessary to secure a job<sup>20</sup>.

## Lack of integrity of elected leaders has eroded public confidence in the State.

Ethical breaches remain common despite the existence of fairly strong mechanisms to regulate ethical behavior and conflicts of interest among public officials and members of parliament. Members of parliament have been known to have physically assaulted police officers without any serious repercussions, while there are allegations that some have voted in support of ministers facing votes of no-confidence in return for money or favours<sup>21</sup>. Numerous members of parliament are also known to run large private businesses, most of them in the name of their relatives, while the sources which provide for the luxurious lifestyles of certain members of parliament have been brought into question<sup>22</sup>.

Such cases only serve to undermine public confidence in the political system and reinforce the sense of impunity which prevails in Afghanistan. One mechanism available to help keep a check on such practices is through the publication of public officials' assets. Although the law currently requires all senior political and public appointees to register their assets with the HOOAC, these are only verified and disclosed if and when the HOOAC deems it necessary. It is not surprising therefore, that since 2008, the full details of only 66 high ranking officials' assets have been

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<sup>15</sup> Asia Foundation, 2015

<sup>16</sup> See Chapter V.4: Public Sector

<sup>17</sup> See Chapter V.4: Public Sector

<sup>18</sup> See Chapter V.4: Public Sector

<sup>19</sup> UNODC. "Corruption in Afghanistan: Recent Patterns and Trends", *UNODC*, 2012

<sup>20</sup> Integrity Watch Afghanistan. "National Corruption Survey 2014", *IWA*, 2014.

<sup>21</sup> See Chapter V.1: Legislature

<sup>22</sup> See Chapter V.1: Legislature



published<sup>23</sup>. While not a panacea, ensuring that all politicians assets are available for public scrutiny would go some way to restoring citizens' confidence in their leaders.

## Progress is possible with strong political commitment to promote integrity.

The government has made progress in a number of areas, demonstrating that where the political will for reform exists, change is possible. One example is in the area of public procurement. The new government established the National Procurement Agency in October 2014 to oversee procurement activities in the public sector with a stated policy of zero tolerance for corruption. According to the government, the agency has already saved more than US\$ 70 million of taxpayers' money and over 50 companies have been blacklisted<sup>24</sup>. Nevertheless, concerns remain over the limited transparency in procurement processes and lack of cooperation with civil society organisations.

The introduction of an access to information law in December 2014 is also seen as a positive move although a number of important weaknesses in the law still need to be addressed. These include ill-defined penalties, timelines and obligations on the part public authorities, and the limited government support for the Oversight Commission on Access to Information in overseeing access to information and addressing public complaints<sup>25</sup>.

A third area of promise is the new government's re-opening of the Kabul Bank case, which involved the embezzlement of more than US\$ 900 million of investor's cash in 2010. As a result, substantial progress has been made in relation to the recovery of funds and the prosecution of those responsible. That said, the fact that the Bank's former Chief Executive was subsequently involved in a large scale government investment project, allowing him to repay his debts while in prison, has drawn strong criticism<sup>26</sup>. Nevertheless, such efforts to fight corruption at the highest level can only be encouraged and should be a focus of future efforts to fight impunity in the country.

## RECOMMENDATIONS

Afghanistan faces numerous daunting governance challenges which need to be addressed if long term stability in the country is to be ensured. Fighting corruption is a long term endeavour which requires sustained political commitment. In a post-conflict context such as Afghanistan, it also requires reforms which are realistic and sequenced. While a number of institution specific recommendations are provided in the remainder of this report, the most critical long term priorities for reform are as follows:

### 1. Develop a strong, independent and effective justice sector to end impunity for corruption

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<sup>23</sup> See Chapter V.8: Anti-Corruption Agency

<sup>24</sup> See Chapter V.4: Public Sector

<sup>25</sup> Integrity Watch Afghanistan. "Right to Information: The foundation for transparent and responsive governance in Afghanistan", *Policy Brief*, August 2015

<sup>26</sup> New York Times. "Afghan Businessman Convicted in Kabul Bank Fraud Is Still Free to Make Money", 4 November, 2015 [http://www.nytimes.com/2015/11/05/world/asia/afghan-businessman-convicted-in-kabul-bank-fraud-is-still-free-to-make-money.html?\\_r=0](http://www.nytimes.com/2015/11/05/world/asia/afghan-businessman-convicted-in-kabul-bank-fraud-is-still-free-to-make-money.html?_r=0); Integrity Watch Afghanistan. "Integrity Watch: Afghan government partnership with Kabul Bank defaulter is outrageous", 6 November, 2015 <http://iwaweb.org/integrity-watch-afghan-government-partnership-with-kabul-bank-defaulter-is-outrageous/>; Reuters. "Afghan government cancels property deal with convicted banker", 7 November, 2015 <http://www.reuters.com/article/us-afghanistan-bank-idUSKCN0SW00820151107>

Within 6-12 months:

- Identify the necessary institutional arrangements to most effectively fight corruption Afghanistan
  - It is essential to provide clarity on the role of each institution involved in the fight against corruption, including the HOOAC, the Independent Joint Monitoring and Evaluation Committee (MEC), and the Attorney General's Office (AGO).

Within 12-18 months:

- Establish a strong independent Anti-Corruption Agency to implement, coordinate, and provide oversight to anti-corruption polices and activities in all government agencies which meets international standards.
  - Within time, the agency should be able to act as an authoritative, external oversight body for police, prosecutors and judges who detect, prosecute and sentence corruption related cases.
- Establish an independent Judicial Services Commission to appoint and train judges and judicial staff, handle complaints and conduct disciplinary procedures against judicial staff.
  - The commission should act as an impartial body free from the influence of the Government, National Assembly or Supreme Court.

## 2. Professionalise and de-politicise the public sector to ensure efficient and impartial delivery of basic services to citizens

Within 6-12 months:

- Focus immediate reform efforts on the Independent Administrative Reform and Civil Services Commission (IARCSC).
  - This body is a critical actor in the oversight of the public sector. The commission should be given adequate financial and human resources to operate and should be expected to lead by example in eliminating political interference from within its own ranks.

Within 12-18 months:

- Ensure that the appointment, promotion, and dismissal of all civil servants is based on merit rather than political considerations or personal connections.
  - Appointment procedures and outcomes must be fully transparent and civil servants' salaries and benefits should be based on a uniform, transparent and adequate salary structure financed from the government treasury.

## 3. Develop a culture of integrity where public duty takes precedence over personal interests

Within 6-12 months:

- All senior public officials including members of the executive, legislative, judiciary and local government should be required not only to register but also to publically disclose their assets.
  - A system to verify the accuracy of asset declarations should be established and all asset declarations made available for public scrutiny.
  - Failure to register assets or the submission of false or incomplete asset declarations should be met with appropriate sanctions.

Within 12-18 months:

- Those appointed to key posts should be selected based on a track record of integrity and demonstrated leadership qualities.
  - Key posts include the positions of the Auditor General, Attorney General, and the Minister of Interior.

# III. COUNTRY PROFILE: FOUNDATIONS FOR THE NATIONAL INTEGRITY SYSTEM

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## POLITICAL-INSTITUTIONAL FOUNDATIONS

Score: 25

The political vacuum created since the invasion of Afghanistan in 2001 is said to have provided the space for the development of clientelistic networks across the country and the redistribution of state resources among the political elite, powerful warlords and those loyal to them<sup>27</sup>. Such relationships have limited the opportunity for open and fair political competition for government office. This is exacerbated by the continued prevalence of violence and insecurity which restrict political activity nationwide through regular attacks against government officials<sup>28</sup>.

Although the majority of Afghans accept the legitimacy of the State, ethnic alliances, social grievances, and the influence of insurgents undermine the government's authority<sup>29</sup>. Deep divisions along different ethnic, sectarian and political lines have been exacerbated by the support of various groups by external actors in an attempt to achieve the objectives of stabilization, state-building and development<sup>30</sup>. Weaknesses in the provision of key services, including security, by the Afghan authorities have allowed armed opposition groups to establish alternative institutions at the community level which challenge the legitimacy of formal government institutions<sup>31</sup>. According to a recent survey by the Asia Foundation, the proportion of Afghans who say that the national government is doing a good job fell from 75% in 2014 to 58% in 2015. Satisfaction with the performance of provincial, municipal, and district governments also declined<sup>32</sup>.

Although the constitution of Afghanistan and other existing laws of the country provide fundamental guarantees - the civil and political rights of citizens, legal protection, and democratic processes for political and economic competition - these rights are not widely respected in practice. Of particular concern are reports of excessive use of force, arbitrary arrest and detention, torture, extortion, and extrajudicial killings by the police, military, local militias, and intelligence forces, in some cases sanctioned by government officials and warlords<sup>33</sup>.

Such actions are largely allowed to go unpunished thanks to a judicial sector which is considered to be highly corrupt<sup>34</sup>, seriously lacking in capacity and unable to provide even the most basic

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<sup>27</sup> Singh, Dani. "The Afghan National Police: A Study on corruption and clientelism", *Security Sector Reform Centre*, 2014

<sup>28</sup> Freedom House. "Freedom in the World Afghanistan 2014", *Freedom House*, 2014

<sup>29</sup> Bertelsmann Stiftung. "Bertelsmann Transformation Index: Afghanistan Country Report 2014", Bertelsmann Stiftung, 2014

<sup>30</sup> Bertelsmann Stiftung, 2014

<sup>31</sup> Bertelsmann Stiftung, 2014

<sup>32</sup> Asia Foundation, 2015

<sup>33</sup> Freedom House, 2014

<sup>34</sup> Transparency International. "Global Corruption Barometer", *TI*, 2013



services<sup>35</sup>. As a result citizens often turn to informal justice through elders, local strongmen or religious institutions, including the Taliban, to resolve local disputes. This trend is confirmed by a recent survey according to which nearly two-thirds (62%) of victims of violence or crime reported the incident to an external authority, with the percentage of Afghans reporting incidents to elders increasing from 16% in 2006 to 37% in 2015<sup>36</sup>. According to one estimate, Taliban courts covered jurisdiction in 150 districts and delivered justice in almost 50% of districts by the end of 2012<sup>37</sup>.

## SOCIO-POLITICAL FOUNDATIONS

Score: 25

Violence along ethnic lines has greatly reduced since the 2001 toppling of the Taliban government, but violent attacks continue to be perpetrated against certain groups. Discrimination against Afghanistan's Hindus and Sikhs is also a persistent problem and has led to significant migration of members of these groups from Afghanistan<sup>38</sup>. While women have formal rights to education and employment, and some are participating in public life, discrimination and domestic violence remain pervasive, with the latter often going unreported<sup>39</sup>.

The Afghan constitution allows political parties, civil society groups, and unions of different types to register and function as political, social, and economic organisations, but political parties are not allowed to directly nominate people for the presidency, for parliamentary seats, or for government positions. Furthermore, to avoid potential conflicts of interest, people associated with political parties are not allowed to become judges, prosecutors, and members of the Armed and Police forces.<sup>40</sup> Political parties in Afghanistan have functioned unofficially in Afghanistan since the 1960s. Currently there are 67 political parties<sup>41</sup> officially registered with the Ministry of Justice (MoJ).

Overall, the country's political party system can be described as very weak, with trust placed more readily in personal networks, than the political system. Most of the political parties are formed around influential political figures, warlords, or religious leaders rather than concrete political, social and economic programmes<sup>42</sup>. Rather than aggregating collective interests, many political parties are seen instead as playing a divisive role thanks to their legacy of "factional splits, ethnic politics and changing alliances"<sup>43</sup>.

Although the emergence of a range of interest groups in Afghanistan is a positive sign, they are largely donor-driven<sup>44</sup>. As a result most CSOs, social and cultural organisations, associations, and interest groups pursue their own limited agenda, ignoring the broader concerns of citizens. Nevertheless, there are organisations and associations which are able to exert pressure on the government and influence some policies and decisions. But since the political elite of Afghanistan is

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<sup>35</sup> Bertelsmann Stiftung, 2014

<sup>36</sup> Asia Foundation, 2015

<sup>37</sup> Bertelsmann Stiftung, 2014

<sup>38</sup> Minority Rights Group International., "State of the World's Minorities and Indigenous Peoples 2015 – Afghanistan", 2 July 2015

<sup>39</sup> Freedom House 2014

<sup>40</sup> The Ministry of Justice, "The Constitution of Afghanistan," Official Gazette 818 (1382AH [2004]): Article 153

<sup>41</sup> Ministry of Justice, "Registered Political Parties and Social Organizations," Ministry of Justice, <http://moj.gov.af/fa/page/registered-political-parties-and-social-organizations/1700> (accessed 7 May 15).

<sup>42</sup> See Chapter V.9: Political Parties

<sup>43</sup> Bertelsmann Stiftung, 2014

<sup>44</sup> Bertelsmann Stiftung, 2014

exclusive and power is concentrated in a small group of well-connected individuals, the public has little political influence and/or room to demand transparency from the government.

## SOCIO-ECONOMIC FOUNDATIONS

Score: 25

The socio-economic situation of Afghanistan has improved in the past fourteen years, particularly when compared to the period of the civil war (1992-1996) and the reign of the Taliban (1996-2001). These changes are mainly due to international aid projects. Since 2001, the international community has tried to rebuild Afghanistan's devastated economic infrastructure and elevate the living standard of the Afghan people. The economy has picked up thanks largely to billions of foreign dollars in Afghanistan and investment by Afghan and international investors in small businesses in Afghanistan. Indeed, according to Freedom House, international presence is associated with a third of legal investment and employment in Afghanistan<sup>45</sup>.

Despite these efforts, however, Afghanistan remains ravaged by poverty. The province of Kabul has a poverty rate of 29% while 36% of Afghans in rural areas and 54% of nomadic Afghans live in poverty.<sup>46</sup> According to USAID: "Afghanistan continues to face economic hurdles, as it remains one of the world's poorest countries. Insecurity and corruption threaten efforts to establish an inclusive, growing, and self-sustaining economy that attracts investment, promotes trade and creates jobs."<sup>47</sup> The private sector meanwhile is heavily influenced by criminal groups, with a reported 49 percent increase in opium production in 2013<sup>48</sup>.

Furthermore, with recent reductions in foreign aid and increased insecurity, the economy has begun to falter. According to the Asian Development Bank (ADB), "the economy is projected to grow by 2.5% in 2015, up from 1.7% in 2014, if the political, security, and business environment is stable."<sup>49</sup> However, whereas the GDP growth rate is projected to be 2.5% in 2015, the inflation rate is estimated to be 5%.<sup>50</sup>

The most dynamic service subsectors have been Communication (45% annual growth), Finance & Insurance (27%) and Transport (22%), with Wholesale and Retail trade lagging at a marginal 4% growth.<sup>51</sup> These are all service sectors directly or indirectly connected with international aid. Once the aid money dries up, there is likely to be little investment and purchasing power to support these sectors. The most recent projections indicate that domestic revenues would reach US\$ 1.76 billion

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<sup>45</sup> Freedom House, 2014

<sup>46</sup> Jordan Kline, "Poverty in Afghanistan," The Borgen Project (March 2015), <http://borgenproject.org/poverty-in-afghanistan/> (accessed on 27 September 2015). Also see, Beyond the War: Poverty in Afghanistan, <https://www.childfund.org/Beyond-the-War-Poverty-in-Afghanistan/>, also see, The World bank, Afghanistan, <http://data.worldbank.org/country/afghanistan>, also see, Index MUNDI, <http://www.indexmundi.com/g/r.aspx?c=af&v=69>.

<sup>47</sup> USAID, "Economic Growth," <http://www.usaid.gov/afghanistan/economic-growth> (accessed 22 April 2015).

<sup>48</sup> Freedom House 2014

<sup>49</sup> Asian Development Bank, "Afghanistan: Economy," <http://www.adb.org/countries/afghanistan/economy> (accessed 22 April 2015).

<sup>50</sup> Asian Development Bank, "Afghanistan: Economy," <http://www.adb.org/countries/afghanistan/economy> (accessed 22 April 2015).

<sup>51</sup> Growth in Afghanistan, Macroeconomic & Economic Growth, <http://web.worldbank.org/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/EXTSARREGTOPMACECOGRO/0,,contentMDK:20592478~menuPK:579404~pagePK:34004173~piPK:34003707~theSitePK:579398,00.html>, (accessed December 15, 2011).

(Af 114.2 billion) - equivalent to 9.8 percent of GDP - by end 2015, falling much behind the initial target of US\$ 1.85 billion (Af 120 billion).<sup>52</sup>

The provision of public services is slowly improving, but remains largely dependent on foreign aid<sup>53</sup>. In a recent survey, a substantial proportion of respondents felt they had been deprived of access to certain public goods and services due to corruption<sup>54</sup>. According to UNODC, 85% of people do not have enough food, clean water, living quarters, and access to basic health. Many of those who are able to obtain these services are forced to pay bribes for services which are supposed to be free. "In 2012, half of Afghan citizens paid a bribe while requesting a public service and the total cost of bribes paid to public officials amounted to US\$ 3.9 billion."<sup>55</sup>

There are very limited social safety nets to compensate for poverty and other risks such as old age, illness, unemployment or disability. Existing social safety nets are inadequate, largely informal and have limited reach and public social safety schemes are characterized by "fragmentation, small programs and poor systems development"<sup>56</sup>.

## SOCIO-CULTURAL FOUNDATIONS

Score: 25

Public mistrust and tolerance of corruption is rather high in Afghanistan. Two thirds of the adult population of Afghanistan consider the receipt of minor gifts by civil servants from service users and the recruitment of civil servants on the basis of family and friendship ties to be acceptable. More specifically, 38% of citizens consider it acceptable for civil servants ask for gifts or money to speed up administrative procedures, 42% find it acceptable that a civil servant is recruited on the basis of family ties, and 42% consider it acceptable that a public official request extra payments because of his/her low salary. 13% of respondents meanwhile accept bribery as a "common practice" in their daily lives that does not require any remedial action<sup>57</sup>.

Thus it would appear that corruption and bribery are not always considered the norm in Afghanistan. For example according to Transparency International's Global Corruption Barometer 2013, 37% of Afghans have at some point refused to pay a bribe. Moreover, 33% of citizens state that they would report an incident of corruption, while 93% of citizens affirm that they would be willing to get involved in the fight against corruption<sup>58</sup>. Thus, while people believe that softer forms of corruption – nepotism, favouritism and clientelism – are permissible, bribery (the paying of a financial bribe) is not deemed acceptable.

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<sup>52</sup> The World Bank "Afghanistan Development Update: Afghanistan: sluggish growth against the backdrop of deteriorating security", 30 October, 2015.

<sup>53</sup> Bertelsmann Stiftung, 2014

<sup>54</sup> Integrity Watch Afghanistan. „National Corruption Survey 2014“, IWA, 2014

<sup>55</sup> UNODC, 2012

<sup>56</sup> Bertelsmann Stiftung, 2014

<sup>57</sup> UNODC, 2012

<sup>58</sup> Transparency International. "Global Corruption Barometer", *Transparency International*, 2013

## IV. CORRUPTION PROFILE

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In 2014, Afghanistan was ranked 172 out of 175 countries on Transparency International's Corruption Perceptions Index<sup>59</sup>. According to citizens, corruption in Afghanistan is the third biggest problem and impediment to progress and development after security and unemployment<sup>60</sup>.

Numerous surveys have been conducted to ascertain citizen's perceptions of corruption as well as their experience with bribery in Afghanistan over recent years. According to the most recent survey (2015), 90% of Afghans say that corruption is a problem in their daily lives, the highest percentage reported in a decade, with 61% saying it is a major problem. Helmand (85%) and Kabul (81%) were the two provinces where the highest proportion of residents say that corruption is a major problem<sup>61</sup>. The same survey reports that the frequency of bribes paid to officials were highest in the municipality/district office (66%) and the judiciary and courts (63%). The United Nations Office on Drug and Crime, meanwhile conducted research in 2012, which found that half of the people in Afghanistan paid a total of US\$ 3.9 billion in bribes to obtain public services, an increase of 40% compared to 2009. Of these bribes, 52% of were paid to civil servants and the police. The survey found that corruption was slightly higher in rural areas (51%) than urban areas (48%). 85% of the bribes given were requested by officials themselves, whereas 13% of the bribes received were offered by the citizens. The bribes were in the form cash money (69%), valuable things (13%), invitation to food (11%), and others (8%)<sup>62</sup>.

According to UNODC "for the vast majority of the Afghan population, by limiting and distorting their right to access essential public services, hindering their chances of economic development and eroding their trust in government, justice and the rule of law, it is administrative corruption that is most keenly felt."<sup>63</sup> As a result, "the delivery of public services remains severely affected by bribery in Afghanistan"<sup>64</sup> and, "access to state resources and services is now determined by citizens' ability to pay money as bribes."<sup>65</sup>

While petty and bureaucratic corruption are undoubtedly pervasive in Afghanistan, grand corruption has an equally pernicious effect. A particular emblematic illustration of the nature of corruption in Afghanistan is the case of the Kabul Bank Scandal which involved the embezzlement of more than US\$ 900 million of investor's cash in 2010 by politically connected elites. A recent inquiry into the case uncovered the extent of fraud involved and the subsequent political collusion to delay investigations and stall the recovery of the stolen funds<sup>66</sup>. Although the sentences of the two main perpetrators were recently increased from 5 to 15 years, one of them, the Bank's chief executive,

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<sup>59</sup> Transparency International, 2016

<sup>60</sup> Asia Foundation, 2015

<sup>61</sup> Asia Foundation, 2015

<sup>62</sup> UNODC, 2012

<sup>63</sup> UNODC, 2012

<sup>64</sup> UNODC, 2012

<sup>65</sup> Ishaqzadeh, Mohammad Razaq and Shahim Ahmad Kabuli, "National Corruption Survey 2014," Integrity Watch Afghanistan, 2014

<sup>66</sup> The Guardian. "Afghan elite ransacked \$900m from Kabul Bank, inquiry finds", *The Guardian*, 20 November, 2012 <http://www.theguardian.com/world/2012/nov/28/afghan-elite-ransacked-kabul-bank>



continues to run financial operations in the country, leading some to talk of a “culture of impunity” in the country<sup>67</sup>.

The reasons for the prevalence of both bureaucratic and political corruption in Afghanistan lie in the nature of the country’s political structure, a complex and non-transparent bureaucratic tradition, pervasive clientelistic networks and the thirty-seven years of war and conflict (see Country profile). Afghan institutions have traditionally been based on the development of so-called “social contracts” of favours and loyalty exchanged for rewards, as a means of strengthening tribal cohesion and building respect for leaders. In the context of rapidly increasing volumes of money coming into the country through both international aid flows and as a result of the trade in opium, these traditional relations have been transformed into “a monumental, perverse and growing machinery for criminal graft”<sup>68</sup>.

Thus, rather than serving to tackle corruption, international aid to Afghanistan and the international community have arguably contributed to the rise of corruption in Afghanistan. According to one commentator “foreign donors’ own transparency problems have turned low-grade corruption into high-stake corruption. A lot of donor money has been lost to corruption in the country<sup>69</sup>, for example through paying warlords for the protection of international convoys<sup>70</sup>, and even more has left Afghanistan to pay for luxury real estate in Dubai and elsewhere-with billions of dollars exiting through the Kabul airport every year.”<sup>71</sup>

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<sup>67</sup> New York Times. “Afghan Businessman Convicted in Kabul Bank Fraud Is Still Free to Make Money”, *New York Times*, 4 November 2015 [http://www.nytimes.com/2015/11/05/world/asia/afghan-businessman-convicted-in-kabul-bank-fraud-is-still-free-to-make-money.html?\\_r=0](http://www.nytimes.com/2015/11/05/world/asia/afghan-businessman-convicted-in-kabul-bank-fraud-is-still-free-to-make-money.html?_r=0)

<sup>68</sup> UNODC, 2012

<sup>69</sup> ProPublica. “We Blew \$17 Billion in Afghanistan. How Would You Have Spent It?”, *ProPublica*, 2015

<sup>70</sup> US House of Representatives, Committee on Oversight and Government Reform, Majority Staff of the Subcommittee on National Security and Foreign Affairs, “Warlord, Inc.: Extortion and Corruption Along the US Supply Chain in Afghanistan”, June 2010 [http://psm.du.edu/media/documents/congressional\\_comm/house\\_oversight\\_gov\\_reform/us\\_house\\_oversight\\_report\\_warlord.pdf](http://psm.du.edu/media/documents/congressional_comm/house_oversight_gov_reform/us_house_oversight_report_warlord.pdf)

<sup>71</sup> Robert D. Lamb and Brooke Shawn, “Political Governance and Strategy in Afghanistan,” Centre for Strategic & International Studies (2012): 28.

## V. ANTI-CORRUPTION ACTIVITIES

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To fight corruption, the government of Afghanistan signed the United Nations Convention Against Corruption (UNCAC) on 20 February 2004, ratified it on 25 August 2008<sup>72</sup>, and subsequently promulgated a law against corruption and bribery. Following the failed attempt to institutionalize the fight against corruption through the establishment of the General Independent Administration for Anti-Corruption (GIAAC) in 2004, the President signed the Law on Supervision and Implementation of Anti-Corruption Strategy (LSIACS). This led to the establishment of the High Office of Oversight and Anti-Corruption (HOOAC) as an independent organisation in 2008 to supervise the implementation of Anti-Corruption Strategy and fight corruption.<sup>73</sup>

The HOOAC was given the authority to register the assets of high ranking government officials and the civil servants, and to simplify bureaucratic procedures, but it did not have any investigative or prosecutorial authority. Following pressure from the international community, President Karzai awarded investigative authority to the HOOAC in 2010. As a result of this change, the professional staff of the HOOAC were promoted to the position of Judicial Record Officers.<sup>74</sup> It was hoped that the HOOAC would be able to develop effective programmes to fight corruption. The reason for this optimism was that the HOOAC officers were now allowed to collect, document, and investigate corruption cases and forward these to the AGO for further investigation and prosecution.<sup>75</sup> While the HOOAC was able to collect data on several cases and forwarded the files for prosecution to the AGO, the failure to cooperate between these two bodies meant that few cases were successfully prosecuted<sup>76</sup>.

In December 2010, the HOOAC developed the Anti-corruption Strategic Plan: 2011 – 2013 to “pursue a multi-pronged approach to dealing with the problem of corruption in Afghanistan, strengthen staff capacity and professionalism, and focus on achieving anti-corruption impacts.”<sup>77</sup> With this strategic plan, the HOOAC intended to provide expert technical assistance to government agencies to help them develop effective anticorruption action plans, improve provisional investigation of corruption cases and refer valid cases to the AGO for further investigation and prosecution, design and implement simplified administrative procedures, increase public awareness about corruption and the government's anti-corruption programme, register and verify assets, collect and investigate citizen complaints about government corruption, collect and evaluate corruption research and best practice, improve recruitment outcomes, strengthening the quality and professionalism of HOOAC technical staff, strengthen the HOOAC administrative, financial, accounting procedures, and conduct effective internal audits.<sup>78</sup>

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<sup>72</sup> United Nations Office on Drugs and Crimes, United Nations Convention against Corruption: Signature and Ratification Status as of 1 April 2015, <https://www.unodc.org/unodc/en/treaties/CAC/signatories.html> (Accessed 9 July 2015)

<sup>73</sup> President of Islamic Republic of Afghanistan, Farman No: 63 included in the Law on Supervision and Implementation of Anti-Corruption Strategy, Official Gazette (1387AH [2008]), Issue Number: 957.

<sup>74</sup> President of Islamic Republic of Afghanistan, Farman No: 61 (1388 AH [2009]): Article 1.

<sup>75</sup> President of Islamic Republic of Afghanistan, Farman No: 61 (1388 AH [2009]): Article 2.

<sup>76</sup> See Chapter V. 8: Anti-Corruption Agency

<sup>77</sup> High Office of Oversight and Anti-Corruption, “Strategic Plan: 2011-2013,” High Office of Oversight and Anti-Corruption (2010): 7.

<sup>78</sup> High Office of Oversight and Anti-Corruption, “Strategic Plan: 2011-2013,” High Office of Oversight and Anti-Corruption (2010): 7-9.

An important step in the strengthening of the anti-corruption legal framework in Afghanistan was the passing of an Access to Information law in December 2014<sup>79</sup>. Despite this positive move, the law contains a number of weaknesses which need to be addressed including as ill-defined terms, conditions, penalties, timelines, and obligations and the requirements on the part public authorities. The absence of a strong and independent commission, to oversee access to information and address public complaints is also a concern<sup>80</sup>.

Another important element in fighting corruption in public office is the protection of whistleblowers. Article 14 of Law on the Supervision and Implementation of Anti-Corruption Strategies protects and rewards individuals who provide information, serve as witness, and help investigate corruption cases.<sup>81</sup> To strengthen whistleblower protection in the country, a draft Whistleblower Law is currently under discussion, and aims to provide legal protection to those who report actual or suspected wrongdoing on the part of government officials. The current draft has incorporated comments from the Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC), and civil-society organizations<sup>82</sup>.

A number of other recent proposed legal amendments hold some promise to strengthen the anti-corruption framework in Afghanistan. A draft Lobbying Law is currently being proposed to make lobbying practices more transparent and prohibit the receipt of gifts from lobbyists. And a draft Administrative Law is also under consideration, which would regulate the steps a citizen must take to challenge a government decision, although the current draft is seen to have numerous shortcomings<sup>83</sup>.

The international community is also engaged in developing capacities, bringing judicial reforms, and fighting corruption in Afghanistan. The World Bank provided financial and technical assistance in areas capacity building (Afghanistan Capacity Building for Results Facility, Civil Service Capacity Building, Admin Capacity Building Project), judicial reforms (Afghan Judicial Reform Projects I & II), and transparency (Afghanistan Extractive Industries Transparency Initiative, Phase I & II).<sup>84</sup>

USAID have provided funds to the Assistance to Afghanistan Anti-Corruption Authority,<sup>85</sup> envisioned to strengthen the HOOAC policy and planning, management, operation, and IT capacities. The DFID produced anti-corruption strategy to safeguard UK taxpayers' money and support efforts to reduce corruption and its impact on development over the next three years.<sup>86</sup>

Overall, the efforts of the Afghan government and the international community can be considered well intentioned, but they have shown little effectiveness to date and the genuine political will to fight corruption is still to be demonstrated. Since coming to office, the new administration's move to

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<sup>79</sup> FreedomInfo.org. "Afghan President Signs Access to Information Law", 9 December 2014, <http://www.freedominfo.org/2014/12/afghan-president-signs-access-information-law/>

<sup>80</sup> Integrity Watch Afghanistan. "Right to Information: The foundation for transparent and responsive governance in Afghanistan", 31 August, 2015 <http://integritywatch.co/wp-content/uploads/2015/09/Policy-Brief-Right-to-Information.pdf>

<sup>81</sup> High Office of Oversight and Anti-Corruption, "Law on the Supervision and Implementation of Anti-Corruption Strategies," Official Gazette 957 (1387 AH [2008]): Article 14.

<sup>82</sup> Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC). "Eighth Six-Month Report, January 1, 2015-June 30, 2015." MEC, 2015. [http://www.mec.af/files/2015\\_09\\_17\\_Eighth\\_Six-Month\\_Report\\_%28English%29.pdf](http://www.mec.af/files/2015_09_17_Eighth_Six-Month_Report_%28English%29.pdf)

<sup>83</sup> Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC). "Eighth Six-Month Report, January 1, 2015-June 30, 2015." MEC, 2015. [http://www.mec.af/files/2015\\_09\\_17\\_Eighth\\_Six-Month\\_Report\\_%28English%29.pdf](http://www.mec.af/files/2015_09_17_Eighth_Six-Month_Report_%28English%29.pdf)

<sup>84</sup> World Bank, Projects & Programs, <http://www.worldbank.org/en/country/afghanistan/projects> (Accessed on 11 August 2015).

<sup>85</sup> United States Agency for International Development (USAID), "Assistance to Afghanistan Anti-Corruption Authority (4A) Project (Final Report)," USAID, November 2013: 5.

<sup>86</sup> DFID, DFID's Anti-Corruption Strategy for Afghanistan, January 2013, <http://www.dfid.gov.uk/afghanistan> (accessed on 11 August 2015).

reopen the Kabul Bank case is seen as a promising move although it has delivered less than was expected<sup>87</sup>. However such moves have done little to ease the sense of impunity that continues to exist with regards to corruption in Afghanistan. Crucially the role of key institutions in the fight against corruption has not been clearly defined and there is no clear strategy to fight corruption in the country.

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<sup>87</sup> Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC). "Eighth Six-Month Report, January 1, 2015-June 30, 2015." MEC, 2015. [http://www.mec.af/files/2015\\_09\\_17\\_Eighth\\_Six-Month\\_Report\\_%28English%29.pdf](http://www.mec.af/files/2015_09_17_Eighth_Six-Month_Report_%28English%29.pdf)

# VI. NATIONAL INTEGRITY SYSTEM

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## 1. THE LEGISLATURE

### Summary

The Constitution of Afghanistan comprehensively covers the structure, election, duration and legal framework of the National Assembly, although it is silent on the question of financial and administrative resources. Structurally, there is a shortage of resources, offices, staff and expertise, despite considerable international assistance, which results in the ineffectiveness of parliamentarians carrying out their duties.

The Constitution requires that the sessions of the National Assembly be open to the public and the media can broadcast sessions of the National Assembly on important occasions. However, the law does not require the National Assembly to record the voting of its members nor is the Assembly obliged to publish its agenda ahead of time. Annual reports of the National Assembly are rarely published.

Members of Parliament (MPs) are subject to the Code of Ethical Conduct for Officials of the Three Branches of GoIRA, which regulates relations and conflict of interest among the legislatures. Furthermore, the Constitution bans those citizens who have committed crimes against humanity and have undermined and/or deprived people of their civil rights to run for the National Assembly. However, Some MPs have been repeatedly found guilty of breaking these ethical standards, for example, by beating up police officers, leading luxurious lives and running big businesses while in office.

The National Assembly is authorised to call on ministers for questions, explanations and clarifications. The Constitution empowers Wolesi Jirga to give votes of confidence and no confidence to ministers. Utilising the above authorities, the National Assembly has provided some oversight to the Executive.

### Structure and organisation

The National Assembly of the Islamic Republic of Afghanistan is based on a bicameral structure: Da Mashrano Jirga (the House of Elders or Senate) with 102 members and Wolesi Jirga (the House of the People) consisting of 249 members. Members of Wolesi Jirga are directly elected by the people; 68 seats are reserved for women and 10 for Kochies (nomads). One-third of Da Mashrano Jirga members are appointed by the President and the remaining two-thirds are elected by provincial and district councils. The provincial and district councils are local assemblies elected by the people.

Da Mashrano Jirga has an Administrative Board, Standing Committees, a Committee of Presidents of Committees and a General Secretariat. Wolesi Jirga has an Administrative Board, Standing Committees, a Committee of Presidents and a General Secretariat.

The parliamentary groups of Da Mashrano Jirga are formed on the basis of the common opinion and affinities of the senators. The minimum number of senators in a parliamentary group is 11. After a parliamentary group is approved by the Speaker, it can hire an assistant to the group. Parliamentary

groups of Wolesi Jirga are formed in the same way as Da Mashrano Jirga. The minimum number of representatives in a Wolesi Jirga Parliamentary Group is 15.<sup>88</sup>

## Assessment

### 1.1 CAPACITY

**Score: 25**

#### 1.1.1 Resources (law) – To what extent are there provisions in place that provide the legislature with adequate financial, human and infrastructural resources to effectively carry out its duties?

The Constitution is silent on the financial and administrative affairs of the National Assembly. Article 125 of the Constitution stipulates that the Judiciary shall prepare its budget in consultation with the Executive. The National Assembly has followed the Judiciary's model and according to the Rules of Internal Procedure of both chambers, the budgets of both houses are prepared by the houses themselves and presented to the Executive for due procedure.<sup>89</sup>

A member of the National Assembly obtains a diplomatic passport, enjoys parliamentary immunity and receives a monthly salary of AFN 195,000 (US\$3431), six times the base salary (AFN 32,500) of a high-ranking civil servant.<sup>90</sup> He/she receives health benefits, two security guards, one driver and one secretary, all paid for by the government.<sup>91</sup>

According to the Rules of Procedure of both houses, there shall be a Secretariat for each house<sup>92</sup> headed by a General Secretariat and concerned officers in charge of security, research, publication, media, logistics and transportation. Wolesi Jirga also has a well-resourced and funded library equipped with internet facilities. The Secretariat of each chamber recruits an advisor and two secretaries for each standing committee. Both houses can hire assistants for their respective parliamentary groups.

**Score: 25**

#### 1.1.2 Resources (practice) – To what extent does the legislature have adequate resources to carry out its duties in practice?

The National Assembly of Afghanistan does not have a fully-fledged parliament building. Committees have meeting rooms, but at times, committee meetings are cancelled due to lack of space.<sup>93</sup> Both houses must use the same facilities until India finishes building the new parliament building in 2015.

The budget of Wolesi Jirga is AFN 1382 million (US\$24.24 million), while Da Mashrano Jirga has a budget of Afghani 556 million (US\$9.75 million). According to the Secretary General of Da Mashrano Jirga the budget is absolutely not enough. An alternative source of funding for government agencies is the international community. According to the same source, to cover the travel expenses of the

<sup>88</sup> Wolesi Jirga, "Rules of Procedure", (1392AH [2013]): Rule 20.

<sup>89</sup> Wolesi Jirga, "Rules of Procedure", 2013: Rule 133 and Mashrano Jirga, "Rules of Procedure", (1386AH [2008]): Rule 110.

<sup>90</sup> Ministry of Justice, "Salaries of High Ranking Officers", Official Gazette 1121 (1392AH [2013]): Articles 2–4.

<sup>91</sup> Interview with Sayed Hafizullah Hashimi, Secretary General of House of Elders, Kabul, 18 February 2015.

<sup>92</sup> Wolesi Jirga. Rules of Procedure, (1392AH [2013]): Rule 19, and Mashrano Jirga, "Rules of Procedure", (1386AH [2008]): Rule 10.

<sup>93</sup> Interview with Fatima Nazari, MP Wolesi Jirga, Kabul, 22 February 2015.



senators, they have to request the support of donor countries.<sup>94</sup> There is also a high turnover of professional staff, which affects the workings of the Mashrano Jirga. The majority of the qualified and experienced cadres are leaving due to low salaries.<sup>95</sup>

Each house has a secretariat responsible for logistics, transportation, administration, finance, and the other affairs of each house. Each committee has two assistants and one advisor. Wolesi Jirga's secretariat has 3000 staff, of which 1700 are drivers, secretaries and guards of the MPs; the remaining 1300 are police and civil servants. Though Wolesi Jirga has a well-equipped library, there is a lack of research culture among the MPs.<sup>96</sup> Both houses have a journal, but it is published irregularly. Wolesi Jirga's Secretariat, according to one MP, has not recruited qualified legal advisors.<sup>97</sup>

Since 2005 various international organisations, including UNIFEM, Global Rights, Friedrich Ebert Stiftung, National Democratic Institute, the United States Agency for International Development (USAID) and the United Nations Development Program (UNDP) have extended their assistance to help strengthen the capacity of parliamentarians and the staff of the Secretariats. UNDP implemented the Support to the Establishment of Afghan Legislature (SEALI and SEALII) projects from 2005 to 2012.<sup>98</sup> During these seven years, UNDP partnered with various international agencies to implement its projects. For example, UNDP partnered with the State University of New York to provide technical and infrastructural assistance for the establishment and operation of the National Assembly.<sup>99</sup> Other important international assistance to the Afghanistan National Assembly has come from the US. USAID funds the Afghanistan Parliamentary Assistance Project (APAP) also implemented by the State University of New York to improve the capacity of parliamentarians and Secretariat staff in areas of legislative strengthening, budget analysis and oversight, institutional development, and constituent outreach. As a part of this project, USAID established the Afghanistan Parliamentary Institute, trained more than 3500 MPs and administrative staff, encouraged the National Assembly to sign MoUs with civil society organisations, developed mechanisms to improve provincial input into the national budget, and helped establish a sub-committee for public accounts review.<sup>100</sup> Although the donors' capacity-building programmes have helped the MPs to some extent,<sup>101</sup> the parliamentarians and their staff still have issues understanding the law and limited capacity to perform their duties.<sup>102</sup>

## **Score: 75**

### **1.1.3 Independence (law) – To what extent is the legislature independent and free of subordination to external actors by law?**

There are adequate constitutional provisions to ensure the independence of the legislature. The Constitution of Afghanistan is based on the division of power between the three branches of the state: the legislature, the Executive and the Judiciary. When the President nominates ministers, judges and other high-ranking officers, Wolesi Jirga has the power to accept or reject the nomination and even has the power to discharge members of the Supreme Court according to the provisions of

<sup>94</sup> Interview with Sayed Hafizullah Hashimi.

<sup>95</sup> Sayed Hafizullah Hashimi, "The National Assembly of Afghanistan and the role of parliamentary commissions", Association of Secretaries General of Parliaments, [www.asgp.co/node/30585](http://www.asgp.co/node/30585) (accessed on 1 March 2015).

<sup>96</sup> Interview with Sayed Hafizullah Hashimi.

<sup>97</sup> Interview with Abdul Hafiz Mansur, MP Wolesi Jirga, Kabul, 22 February 2015.

<sup>98</sup> Dyfon Jones, "Evaluation of UNDP SEAL II Project", United Nations Development Program, 2010: 4.

<sup>99</sup> Jones, 2010: 20.

<sup>100</sup> USAID, "Afghanistan Parliamentary Assistance Project," USAID, [www.usaid.gov/news-information/factsheets/afghanistan-parliamentary-assistance-project-apap](http://www.usaid.gov/news-information/factsheets/afghanistan-parliamentary-assistance-project-apap) (accessed on 6 August 2015).

<sup>101</sup> Interview with Fatima Nazari.

<sup>102</sup> Interview with Abdul Hafiz Mansur.

law.<sup>103</sup> Thus, the Constitution of Afghanistan has created a strong legislature with a weak Judiciary, and a balanced Executive.

In the bicameral system of Afghanistan, the Constitution has made Wolesi Jirga far more independent and more powerful than Da Mashrano Jirga. Da Mashrano Jirga, two-thirds of which is appointed by the President, is always supportive of the Executive. The National Assembly has two annual sessions, each lasting four and a half months. If needed, a regular term can be extended. Any extraordinary session during recess shall be convened by a Presidential Order.<sup>104</sup> Annual sessions of the National Assembly are inaugurated by the President.

Each house is fully independent to make its own rules and procedures and conduct its own business. Da Mashrano Jirga and Wolesi Jirga elect their Speakers/Deputy Speakers and Presidents/Deputy Presidents respectively.<sup>105</sup> The National Assembly cannot, however, hire its own administrative staff. The staff of the Secretariats of each house is hired by the Independent Administrative Reform and Civil Service Commission (IARCSC), which has the mandate to hire civil servants.

Each house of the National Assembly can initiate the draft of a bill.<sup>106</sup> The draft is introduced to the Wolesi Jirga by the Minister for Parliamentary Affairs. Wolesi Jirga takes one month to pass a bill with a simple majority and forwards it to Da Mashrano Jirga, which takes 15 days to pass the same bill. After it is endorsed by the President and published in the official gazette, it becomes law. In the event of a difference between the President and/or Da Mashrano Jirga with Wolesi Jirga, Wolesi Jirga can pass a bill with two-thirds of the votes of all its members. After the endorsement of the President, the bill becomes law and is enforceable without Da Mashrano Jirga's consultation.<sup>107</sup>

In a State of Emergency, the President cannot dissolve the National Assembly. However, in consultation with the Presidents of the National Assembly and the Chief Justice of the Supreme Court, he can transfer some legislative powers to the Executive.<sup>108</sup>

The Committee of the Presidents, i.e., the heads of internal committees of each house, determines its own agenda. The members of the National Assembly can speak about issues not included in the agenda at the Privileged Hours held once a week. Freedom of Speech is subject to the Rules of Procedure of each house and the Constitution. No member of the National Assembly shall be legally prosecuted for voting and expressing views during their performance of duties.<sup>109</sup>

## **Score: 75**

### **1.1.4 Independence (practice) – To what extent is the legislature free from subordination to external actors in practice?**

The legislature, despite pressure from the Executive, conducts its business free from external influence. During its sixth session, from September 2013 to January 2014, eight drafts of laws and one amendment were submitted to Wolesi Jirga, of which only one was initiated by itself. Exercising its authority, Wolesi Jirga rejected a proposal by the Executive to amend the Election Law, but it

<sup>103</sup> The Ministry of Justice, "The Constitution of Afghanistan," Official Gazette 818 (1382AH [2004]): Article 64 and 127.

<sup>104</sup> MoJ, "Constitution", 2004: Article 107.

<sup>105</sup> MoJ, "Constitution", 2004: Article 87.

<sup>106</sup> MoJ, "Constitution", 2004: Article 95.

<sup>107</sup> MoJ, "Constitution", 2004: Article 100.

<sup>108</sup> MoJ, "Constitution", 2004: Article 144.

<sup>109</sup> MoJ, "Constitution", 2004: Article 101.

passed all the remaining laws drafted by the Executive.<sup>110</sup> During the recess, which followed the sixth session, the President issued Decree 57 regarding the authority of the courts, but Wolesi Jirga rejected this decree in the first session after the recess. Thereafter, Wolesi Jirga passed three laws with a two third majority, including the media law. These were sent to the President for signature. After the President rejected these laws, the Parliament overwrote the President's decision and the proposed legislations became law.

The relationship between the Executive and Wolesi Jirga has been turbulent over recent years.<sup>111</sup> Wolesi Jirga exercised its authority and proceeded with a vote of no confidence against sitting ministers in 2012 and gave a vote of no confidence to newly recommended ministers in January 2015. In 2010, Wolesi Jirga rejected 17 out of 24 ministers introduced by Hamid Karzai, while it rejected 10 out of 19 ministers introduced by President Ghani in 2015.<sup>112</sup>

On the other hand, while Wolesi Jirga has frequently criticised the Executive's interference and its failure to follow the law, the Wolesi Jirga has not done anything practical to stop Executive interference in its affairs. When there is a deadlock between Wolesi Jirga and the Executive, the Constitution of Afghanistan does not provide explicit and clear guidance on how to solve the issue. According to a former minister,<sup>113</sup> the Independent Commission for Overseeing the Implementation of the Constitution is responsible for resolving such a deadlock, but it is subordinated to the Executive and its members lack courage to withstand executive pressure.<sup>114</sup>

## 1.2 GOVERNANCE

**Score: 50**

### 1.2.1 Transparency (law) – To what extent are there provisions in place to ensure that the public can obtain relevant and timely information on the activities and decision-making process of the legislature?

There are some provisions that ensure transparency in decisions-making and activities of the National Assembly, but these are not comprehensive. According to the Constitution, the sessions of the National Assembly shall be open to the public, unless the President of the Assembly or at least 10 members of the National Assembly request their secrecy and the assembly grants the request.<sup>115</sup> However, the law does not require the National Assembly to record the voting of its members nor is the assembly obliged to publish its agenda ahead of time.

The Rules of Internal Procedure of each house of the National Assembly consist of a separate chapter on public access to information and decision-making. Each house shall allow its proceedings to be broadcast live. The houses shall have their own publication in which the debates of each house are published. Attendance in both houses is open to the public and journalists, but it is subject to availability of seats and prior request.<sup>116</sup>

Based on the Law on Overseeing the Implementation of Anti-Corruption Strategy, each member of the National Assembly is required to register their assets at the HOOAC. The HOOAC is

<sup>110</sup> Wolesi Jirga, "The Sixth Session Annual Report", Wolesi Jirga, <http://wj.parliament.af/english.aspx> (accessed on 24 February 2015).

<sup>111</sup> Gran Hewad, Thomas Ruttig and Claudio Franco, "Tit for Tat – and Worse: The long history of enmity between parliament and government", Afghan Analyst Network, [www.afghanistan-analysts.org/tit-for-tat-and-worse-the-long-history-of-enmity-between-parliament-and-government/](http://www.afghanistan-analysts.org/tit-for-tat-and-worse-the-long-history-of-enmity-between-parliament-and-government/) (accessed on 24 February 2015).

<sup>112</sup> Hewad, Ruttig and Franco.

<sup>113</sup> Interview with Anwar ul-Haq Ahady, former Minister of Finance, Kabul, 20 February 2015.

<sup>114</sup> Interview with Professor Wadir Safi, Kabul University, Kabul, 19 February 2015.

<sup>115</sup> MoJ, "Constitution, 2004: Article 105.

<sup>116</sup> Wolesi Jirga, "Rules of Procedure", 2013: Rule 62.

empowered to verify the assets and forward suspicious cases to the Attorney General Office (AGO). However, there is no mechanism to sanction MPs who fail to register their assets and the HOOAC is not required by law to publish the assets of the MPs.

**Score: 50**

**1.2.2 Transparency (practice) – To what extent can the public obtain relevant and timely information on the activities and decision-making processes of the legislature in practice?**

The National Assembly does not have a systematic plan or means of publication to inform the public of its activities. However, the two chambers are accessible to the public and the media. There is a separate room for journalists and the public to observe the sessions of both houses. The websites of both chambers provide reports about the decisions of the sessions and committees, but many people do not have access to the internet. Some TV channels broadcast important sessions of the houses, such as votes of confidence or no confidence, or the summoning of ministers and other government officials. In January 2015, one private channel broadcast the nomination approval process of President Ghani's Cabinet for one week.

After the plenary sessions and committee meetings, the National Assembly publishes the records of the sessions and reports of the committees. The agenda of the sessions and the committee hearings are not published ahead of time, but the Secretariats distribute handouts of the agenda before each session. Individual MPs discuss the activities of their respective house through private TV channels.

The National Assembly lags behind in publishing its annual reports. Wolesi Jirga has published annual reports only for two out of eight years, namely 2012/2013 (1391) and 2013/2014 (1393).<sup>117</sup> The Upper House has done better compared with the Lower House regarding transparency. Da Mashrano Jirga has published its annual report for five out of eight years, from 1384 (2005) to 1389 (2010).<sup>118</sup> The National Assembly budget is published as part of the state budget but the assembly does not publish its financial statements.

Even though the law requires that members of the National Assembly and other high-ranking officials shall register their assets, currently, only 8000 high-ranking officials, including parliamentarians, have registered their assets.<sup>119</sup> According to our interviews, not all the MPs have registered their assets.

**Score: 75**

**1.2.3 Accountability (law) – To what extent are there provisions in place to ensure that the legislature has to report on and be answerable to its actions?**

The legislature is the strongest of the three branches of government but there are certain mechanisms to keep its power in check. However, the lack of public consultation mechanisms is an important gap.

<sup>117</sup> Wolesi Jirga, "Sixth Session Annual Report", Wolesi Jirga, [www.wolesi.com/pvd/document.aspx?Cat=53](http://www.wolesi.com/pvd/document.aspx?Cat=53) (accessed on 24 February 15).

<sup>118</sup> Da Mashrano Jirga, "Musawebat Jalasat Omumi mashrano Jirga", Da Meshrano Jirga, [www.meshran.com/pvd/showdoc.aspx?Id=1075](http://www.meshran.com/pvd/showdoc.aspx?Id=1075) (accessed on 24 February 2015).

<sup>119</sup> Rafi Sediqi (2014) "Official fail to register assets for anti-corruption effort", Tolo News, [www.tolonews.com/en/afghanistan/14945-officials-fail-to-register-assets-for-anti-corruption-effort](http://www.tolonews.com/en/afghanistan/14945-officials-fail-to-register-assets-for-anti-corruption-effort) (accessed on 24 February 2015).

In Afghanistan, legislative power is restricted by the Constitution. The National Assembly cannot pass a law that contravenes the tenets and provisions of the holy religion of Islam in Afghanistan<sup>120</sup> Moreover, the Loya Jirga (Grand Assembly)<sup>121</sup> stands higher than the National Assembly in representing the people; therefore, the power to amend the Constitution is entrusted to the Loya Jirga.<sup>122</sup>

Furthermore, at the request of the government, or the courts, the Supreme Court can review the laws, legislative decrees, international treaties and international covenants for their compliance with the Constitution and coherence with the law.<sup>123</sup>

If a member of the National Assembly is accused of a crime, the responsible official shall inform the relevant house and the accused shall be legally prosecuted. With sufficient evidence, the responsible official shall legally pursue and arrest the accused without the need for permission from the house of which the accused is a member.<sup>124</sup>

There is no standard mechanism that requires the National Assembly to consult on important issues with the public. However, each chamber of the National Assembly has a permanent committee to address complaints from citizens, companies and other legal persons/entities.<sup>125</sup> The committee has the authority, like other committees, to call upon government officials, social associations, non-government organisations and international non-government organisations to answer questions and enquiries.<sup>126</sup>

## Score: 25

### 1.2.4 Accountability (practice) – To what extent does the Legislative and its members report on and answer for their actions in practice?

The Executive and Mashrano Jirga can suggest alternatives to decisions made by Wolesi Jirga, but they cannot reject them. The Judiciary can declare a decision made by Wolesi Jirga null and void if it contradicts the Constitution, but in practice this has happened only at the request of the Executive. Critics considered the removal of the Supreme Court Justices in 2011 by Wolesi Jirga as a reaction against the Judiciary.<sup>127</sup>

To date there has been no case of the National Assembly consulting with the people on important national issues. In late 2014, the National Assembly did not seek advice on the decision to approve the Bilateral Security Agreement with the United States of America or approving the annual national budget.

The public submit their grievances to the Wolesi Jirga. During its sixth session, Wolesi Jirga had to investigate 1010 complaints submitted by ordinary citizens and businesses.<sup>128</sup>

<sup>120</sup> MoJ, "Constitution", 2004: Article 3.

<sup>121</sup> A traditional national assembly of Afghanistan, consisting of elders, tribal leaders and representatives of the country's constituent communities.

<sup>122</sup> Ibid, Article 111.

<sup>123</sup> Ibid, Article 121.

<sup>124</sup> Ibid, Article 102.

<sup>125</sup> Wolesi Jirga, "Rules of Procedure", 2013: Rule 24, and Mashrano Jirga, "Rules of Procedure", 2008: Rule 21.

<sup>126</sup> Wolesi Jirga, "Rules of Procedure", 2013: Rules 28 and 29.

<sup>127</sup> BBC Persian, "Maslisi Afghanistan raees wa panj ozwe dadgahe aali ra salbe itimad kard", BBC Persian [www.bbc.co.uk/persian/afghanistan/2011/06/110625\\_k02-afg-parliament-sup-court.shtml](http://www.bbc.co.uk/persian/afghanistan/2011/06/110625_k02-afg-parliament-sup-court.shtml) (accessed on 24 February 15).

<sup>128</sup> Wolesi Jirga, "The Sixth Session Annual Report", Wolesi Jirga, <http://wj.parliament.af/english.aspx> (accessed on 24 February 2015).

Nonetheless, people have called the National Assembly to account through public pressure. In July 2014, Wolesi Jirga passed a draft, Law of Rights and Immunities of National Assembly Members, which provided salary and security to MPs even if they lose their seats in the coming elections. People from across Afghanistan protested against the endorsement of this law.<sup>129</sup> Da Mashrano Jirga rejected the law and Wolesi Jirga did not overrule Da Mashrano Jirga's decision by two-thirds majority. Even though Wolesi Jirga had enough votes to overrule Da Mashrano Jirga's decision, due to public pressure, members of Wolesi Jirga decided not to overrule it.

In December 2011, a female MP from Ghazni physically assaulted a police officer on duty. In two separate cases, the bodyguards of MPs have assaulted police officers on duty.<sup>130</sup> In the case of Ghazni's MP, the Interior Ministry informed the house of her wrongdoing, but there was no case filed against the MP.<sup>131</sup> According to the President of the Audit Committee of the Wolesi Jirga, the Ministry of Interior Affairs (MoIA) was responsible for not filing complaints against the MP.<sup>132</sup> Based on our review of online news agencies, no case was filed against the MP by ordinary citizens.

**Score: 50**

### **1.2.5 Integrity (law) – To what extent are there mechanisms in place to ensure the integrity of members of the legislature?**

There is not an exclusive code of conduct for the National Assembly members but there is a code of conduct for high-ranking officials of the state, referred to as Code of Ethical Conduct for Officials of the Three Branches of Government of Islamic Republic of Afghanistan.

According to this code of conduct, National Assembly members should not hold other positions or engage in business on their own or through their relatives with the state or private sector, which may even be remotely related to the state enterprise.<sup>133</sup> Furthermore, a member of the National Assembly should not express his/her opinion regarding an issue in which a personal interest or the interests of his/her relatives are engaged. Instead, it is appropriate to express the kind of interest involved and remain silent.<sup>134</sup>

A commission is established to judge complaints received in relation to Code of Ethical Conduct for Officials of the Three Branches of Government of the Islamic Republic of Afghanistan. The commission is headed by the Chief Justice and has three members from the Executive, two members from the National Assembly, and one member from the Judiciary.<sup>135</sup>

In the code of conduct, there is no provision that regulates the exchange of gifts and hospitality for the members of the National Assembly. In addition, this code of conduct does not have any provision with regard to post-employment restrictions. National Assembly members can immediately enter private business if they choose not to remain a member. To further relieve the MPs from integrity principles, lobbying groups are not recognised in Afghan law. As a consequence, members of the National Assembly are not required to disclose their contacts with informal lobbying groups that exist in Afghanistan.

<sup>129</sup> BBC Persian, "etrizat gustarda dar Afghanistan alay he tasweeb qanun imteyazat azaye parلمان," BBC Persian, [www.bbc.co.uk/persian/afghanistan/2014/07/140716\\_k03\\_afghan\\_anti\\_mps\\_law](http://www.bbc.co.uk/persian/afghanistan/2014/07/140716_k03_afghan_anti_mps_law) (accessed on 24 February 2015).

<sup>130</sup> Ghanizada, "Huma Sultani to face legal action for humiliating police officer," Khaama Press, [www.khaama.com/huma-sultani-to-face-legal-action-for-humiliating-police-officer-2653](http://www.khaama.com/huma-sultani-to-face-legal-action-for-humiliating-police-officer-2653) (accessed on 24 February 2015).

<sup>131</sup> Ghanizada.

<sup>132</sup> Interview with Abdul Hafiz Mansur.

<sup>133</sup> Ibid, Article 33.

<sup>134</sup> Ibid, Article 34.

<sup>135</sup> The Ministry of Justice, "Code of Ethical Conduct for Officials of the Three Branches of Government of Islamic Republic of Afghanistan", Official Gazette 1051 (1389AH [2011]): Article 28.



Members of the National Assembly are obligated to register their assets with the HOOAC. The HOOAC has the authority to verify and disclose the registered assets, if it deems it necessary.<sup>136</sup> (For further details please refer to the Anti-Corruption Agencies Pillar).

**Score: 0**

### **1.2.6 Integrity (practice) – To what extent is the integrity of legislators ensured in practice?**

Even though, there is a code of conduct with provisions on conflict of interest policies for the MPs, some members of the National Assembly have repeatedly violated these ethical standards. Numerous MPs run large private businesses, most of them in the name of their relatives. Many people, including some members of the National Assembly, question the luxurious life style of certain MPs. On several occasions, some MPs have physically assaulted police officers.<sup>137</sup> Although the MoIA initially stated that it would file complaints against the offending MPs,<sup>138</sup> in practice this has not materialised.

People believe that when a minister is faced with a vote of confidence, some MPs vote in return for money or favours.<sup>139</sup> The National Assembly has not taken any steps to probe such allegations, although President Ghani is reported to have established a special commission to report ministerial candidates' and MPs' corrupt practices during the nomination approval process.<sup>140</sup>

The HOOAC has registered the assets of some members of the National Assembly but the HOOAC has not published their assets. Some MPs asserted that the HOOAC has not asked them to register their assets.<sup>141</sup> It is not possible to verify how many MPs have registered their assets, let alone how many have been scrutinised.

## **1.3 ROLE**

**Score: 75**

### **1.3.1 Executive oversight: role (law and practice) – To what extent does the legislature provide effective oversight of the Executive?**

The National Assembly is empowered by the Constitution to call on any minister to come and explain themselves in Parliament. In September 2012, after the sporadic shelling of Konar province by Pakistan, Wolesi Jirga summoned both the Ministers of Interior and Defence. After the inquiry, Wolesi Jirga relieved them from their duties through a vote of no confidence.<sup>142</sup> Deputy ministers and lower-ranking officials are regularly called upon by the committees of both chambers to provide information and explain their actions. For important national issues, the National Assembly can establish special committees and/or joint committees, as well as ad hoc sub-committees, to investigate and report to the house.

<sup>136</sup> The Ministry of Justice, "Law on Super Vision and Implementation of Anti-Corruption Strategies", Official Gazette 957 (1387AH [2008]): Article 12.

<sup>137</sup> Ghanizada.

<sup>138</sup> Sahar Lewal, "wazarat umur dakhela bar khurd uma sultani ba police ra shadida taghbi kard," Radio Azadi, <http://da.azadiradio.org/content/article/25216478.html> (accessed on 26 February 2015).

<sup>139</sup> Kate Clark, "How to become a minister: bribe the parliament", Afghan Analyst Network, [www.afghanistan-analysts.org/how-to-become-a-minister-bribe-the-parliament-updated/](http://www.afghanistan-analysts.org/how-to-become-a-minister-bribe-the-parliament-updated/) (accessed on 24 February 2015).

<sup>140</sup> Afghanistan Voice Agency, "Raees jumhor mane as mahamela wuzara wa wukala meshawad", Afghanistan Voice Agency, [www.avapress.com/vdcccmpqsm2bqxp8\\_ala2.html](http://www.avapress.com/vdcccmpqsm2bqxp8_ala2.html) (accessed on 24 February 2015).

<sup>141</sup> Interview with Fatima Nazari.

<sup>142</sup> BBC Persian, "majlesi afghansitan wuzara defa wa keshwar ra salbe salaheyat kard," BBC Persian, [www.bbc.com/persian/afghanistan/2012/08/120804\\_disqualification\\_ministers.shtml](http://www.bbc.com/persian/afghanistan/2012/08/120804_disqualification_ministers.shtml) (accessed on 24 February 2015).

The Executive Branch has to prepare its annual budget and submit it to the National Assembly for approval. The National Assembly can either approve or reject the budget; it cannot amend it. At the end of each financial year, the Ministry of Finance and the Supreme Control and Audit Office have to report on their expenditure from the budget to the National Assembly.<sup>143</sup>

Except for the President, who is elected by the people, appointment of members of the Supreme Court, Cabinet ministers, the Attorney General, the Head of the Central Bank, the National Security Director, and the Head of Red Crescent have to be approved by the National Assembly.<sup>144</sup> The National Assembly can initiate the process of impeaching the President and the vote of no confidence against ministers. The President cannot be impeached for the poor performance of his/her duty, but the National Assembly can start the procedure of impeachment, if he/she is accused of crimes against humanity, national treason and other crimes.

**Score: 50**

### **1.3.2 Legal reforms – To what extent does the legislature prioritise anti-corruption and governance as a concern in the country?**

Since 2005, the National Assembly has passed more than 140 laws and ordinances,<sup>145</sup> three of which can play an important role in strengthening transparency and accountability: the Access to Information Law endorsed by President Ghani in January 2015, the Anti-Money Laundering Law of 2014, and the Financing of Terrorism Prevention Law of 2014. The Afghanistan National Assembly is a signatory to the United Nation Convention on Anti-Corruption.

The Access to Information Law, which is supposed to be implemented by a commission, is quite progressive in obligating all government institutions to provide information upon request in accordance with the provisions of law. However, civil society organisations claim the structure and authority of the Access to Information Oversight Commission (AIOC) and the imposed limits on providing information make the law weak.<sup>146</sup>

Wolesi Jirga also formed the ad hoc Commission for Monitoring the Performance of the Government to probe grand corruption cases. The commission worked for eight months from February to October 2013 and it produced a report on 1.3 million *jereeb* (26,000 acres) of public and private land usurpation. The commission claimed that around 15,000 people are involved in land usurpation and published some of the names. Some MPs criticised the commission for not publishing all the names of land grabbers.<sup>147</sup>

#### **Recommendations:**

- The Constitution should be amended to require the Executive to implement legislation and resolutions passed by the National Assembly.
- MPs should have the appropriate knowledge and capacity to draft laws, gained through training or education.
- The Wolesi Jirga's Finance and Budget Committee should develop the capacity to adequately assess the Supreme Audit Office's (SAO) audit results and a

<sup>143</sup> The Ministry of Justice, "Audit High Administration Law," Official Gazette 1101 (1392AH [2013]): Article 12.

<sup>144</sup> MoJ, "Constitution", 2004: Article 64(11).

<sup>145</sup> Da Mashrano Jirga, "Musawebat Jalasat Omumi Mashrano Jirga", Da Meshrano Jirga, [www.meshran.website/pvd/showdoc.aspx?Id=14430](http://www.meshran.website/pvd/showdoc.aspx?Id=14430) (accessed on 24 February 2015).

<sup>146</sup> Habib Mugbel, "qanun dastrasi ba etalat bayad az tareeq yak farman taghnini tadil gardad", IWA Monthly Magazine 50 (2015): 4.

<sup>147</sup> Jaweed Hassanzada, "Mujadadi: besh az 15 hazar tan dar 32 welayat dar ghasb zameen dast darand," Radio Azadi, <http://da.azadiradio.org/content/article/25141926.html> (accessed on 1 March 2015).

mechanism should be developed to allow audited entities to challenge audit results, other than via the President alone.

- The National Assembly should ensure proactive publication of information on its activities and decisions in a systematic way, including the publication of its agendas ahead of time and the publication of voting decisions of its members.

## 2. THE EXECUTIVE

### Summary

The Executive consists of the President, the Cabinet, the Attorney General, and Da Afghanistan Bank. Even though the President and the ministers have the authority to prepare their own budget, the Executive has inadequate qualified human and technical resources in areas of policy-making and financial management.

Under the Constitution the members of the Executive are independent in carrying out their duties. The President as the head of the state is accountable to Wolesi Jirga. The Chief Executive Officer (CEO) reports only to the President. The ministers are accountable to both the President and Wolesi Jirga. The Wolesi Jirga has gone to extremes in calling the ministers to explain themselves and use of votes of no confidence to dismiss ministers, and some argue that they abuse their positions to obtain procurement contracts from the ministries.

Members of the Executive are required to register and declare their assets with the HOOAC. In practice, up to now, many members of the Executive have either been unwilling or slow in submitting information about their assets.

Despite the huge influxes of the development aid provided by the donors to the national budget, the public sector has not been well governed by the Executive. There is a code of conduct for the members of the Executive, but it is hardly followed and implemented in practice. Internal and external interference, poor implementation of policies, and a lack of transparency and accountability mechanisms within the Executive Branch are important factors contributing to this failure.

### Structure and organisation

The Executive is constitutionally mandated to implement the country's laws, rules, and regulations. It is comprised of the President, two Vice-Presidents, the Cabinet, the Attorney General, central government institutions and several independent commissions. The President nominates the ministers, the Attorney General, the Head of the Central Bank, the National Security Director and the Head of the Red Crescent.<sup>148</sup> The President is the Head of State and the government, as well as the Commander-in-Chief of the armed forces of Afghanistan. As the Commander-in-Chief the President has the power to declare war and cease-fires upon approval from the National Assembly.<sup>149</sup>

The President is elected by the people for five years and can serve a maximum of two terms. To be elected as president, he/she needs to receive 50 per cent plus one of the votes through free, general, secret and direct voting. Elections for the new President shall be held within 30 to 60 days prior to the current President's end of term.<sup>150</sup> The position of the CEO is not mentioned in the Constitution, but due to the establishment of the National Unity Government, which resulted from the 2014 presidential election disputes, the Afghan president created the position of the CEO with Presidential Decree No 45 on 13 December 2014. According to Article 8 of the decree, the CEO is answerable only to the President. The CEO is responsible for carrying out the administrative, executive and financial affairs of the government, and provides progress reports to the Cabinet. The CEO chairs the weekly meetings of the Council of Ministers (Shura-e-Waziran), which includes the

<sup>148</sup> MoJ, "Constitution", 2004: Article 64(11).

<sup>149</sup> MoJ, "Constitution", 2004: Article 64(4).

<sup>150</sup> MoJ, "Constitution", 2004: Article 60(3).

CEO, the deputy CEOs, and the ministers.<sup>151</sup> Responsibility for the overall administration of the government lies with the President. To better manage and bring administrative reforms to the government, the President merged the President's Office into the Office of Administrative Affairs and Council of Ministers Secretariat (OAACoMS).<sup>152</sup>

## Assessment

### 2.1 CAPACITY

**Score: 50**

#### 2.1.1 Resources (practice) – To what extent does the Executive have adequate resources to effectively carry out its duties?

The Executive has the authority to prepare its own budget. Afterwards, it is approved by the Cabinet and the Parliament; once the President has issued a decree, the budget is considered final.<sup>153</sup> The government budget is contingent upon the availability of funds in the treasury and international aid. The total budget of the Afghan government for the fiscal year 2014–2015 (1394) is AFN 436.172 billion (US\$7.652 billion).<sup>154</sup> In 2013/2014 (1393) the Ministry of Finance allocated AFN 2.097 billion (US\$36.8 million) to the President's Office and AFN 939.154 million (US\$16.476 million) to the Office of Administrative Affairs. As a result of the merger of the two offices in 1394 into OAACoMS, the total budget amounted to AFN 2.739 billion (US\$48.054 million).<sup>155</sup> This budget seems to be sufficient, because the OAACoMS has not complained about the cut. Considering the number of people working at OAACoMS, the funds seem to be sufficient.

The Executive is also well funded. The President is provided with a diplomatic passport, AFN 487500 (US\$8553) in monthly salary, security guards, housing, health insurance, travel costs, cell phone, internet, mail, stationary, driver, cook, gardener and secretary.<sup>156</sup> Each minister receives a salary of AFN 195,000 (US\$3421) per month. Aside from the salary, a minister receives the entire above-mentioned package, except the gardener.<sup>157</sup>

On the other hand, the Executive has very limited trained and qualified human resources capacities. Dr Anwar ul-Haq Ahady, who served in the Karzai Administrations as Head of the Central Bank, Minister of Finance and Minister of Commerce stated that "our ministries still hire accountants and advisors from abroad. This lack of sufficient human resources affects our economy".<sup>158</sup>

According to the Ministry of Finance documents, the Executive also does not possess sufficient technical resources. The government institutions lack the necessary technological infrastructure and institutional framework to improve service delivery and accountability.<sup>159</sup> Even though President Ashraf Ghani promised during his election campaign and thereafter that he would appoint

<sup>151</sup> Agreement between the two electoral teams about the assembly of the National Unity Government, 29-6-1393AH, Sec B, Item 9.

<sup>152</sup> Tolo News, "First 100 days: The New Administration Achievements", Tolo News, [www.tolonews.com/en/afghanistan/16670-first-100-days-the-new-administrations-achievements](http://www.tolonews.com/en/afghanistan/16670-first-100-days-the-new-administrations-achievements) (accessed on 11 February 2015).

<sup>153</sup> Ministry of Finance, "1393 National Budget", Directorate of General Budget (n.d.): 34.

<sup>154</sup> Ministry of Finance, "1394 National Budget Document", Directorate of General Budget (n.d.): 65.

<sup>155</sup> MoF, "1394 National Budget", 57.

<sup>156</sup> Ministry of Justice, "Law for Regulating Salaries of the Government High Ranking Officials, Law on Regulating the Salary and Expenditure of the President of Islamic Republic of Afghanistan," Official Gazette 1121 (1392AH [2013]): Articles 12–18.

<sup>157</sup> MoJ, "Regulating Salaries", 2013: Article 3.

<sup>158</sup> Interview with Dr Anwar ul-Haq Ahady.

<sup>159</sup> Ministry of Finance, "Civilian Technical Assistance Program: Quarterly Progress Report. Monitoring and Evaluation Department", [www.ctap.gov.af/site\\_files/14160374731.pdf](http://www.ctap.gov.af/site_files/14160374731.pdf) (accessed on 11 February 2015).

professionals and qualified personnel to government posts and thoroughly investigate and analyse issues before making any policy decisions; in practice, there is no systematic research and analysis in the Executive before making decisions and designing policies.<sup>160</sup>

**Score: 100**

### **2.1.2 Independence (law) – To what extent is the Executive independent by law?**

The Constitution of Afghanistan gives power, independence and authority to the Executive to perform its duties effectively and efficiently. As stated before, the members of the Cabinet, the Attorney General, the Head of the Central Bank, the National Security Director and the Head of the Red Crescent are nominated by the President and endorsed by Wolesi Jirga. The President has the authority to appoint, retire and accept the resignation of – and/or dismiss – judges, officers of the armed forces, police, national security and high-ranking officials according to the provisions of law.<sup>161</sup> In a decree issued on 6 October 2014, President Ghani changed the status of all the sitting governors as acting governors. The governors of the 34 provinces were not allowed to hire or fire any staff or employee until new governors were appointed. This decree was even accepted by the Governor of Balkh who previously had declared that he did not recognise Mr Ghani as the elected President.<sup>162</sup>

Within the provisions of the law, the Constitution gives the President the authority to sign laws, issue legislative decrees and establish commissions to improve the administration of the country.<sup>163</sup> The Constitution has also given the President the power to call for a referendum on issues of national, political, social and economic importance.<sup>164</sup>

Ministers are independent in the performance of their tasks, but work under the direct supervision of the President. Ministers are accountable to the Wolesi Jirga and the President.<sup>165</sup> The CEO is accountable only to the President,<sup>166</sup> while the President is accountable to the nation and Wolesi Jirga.<sup>167</sup> There is no explicit rule whereby ministries are allowed to interfere in the affairs of other ministries; however, a ministry may consult another ministry before taking certain action.

**Score: 25**

### **2.1.3 Independence (practice) – To what extent is the Executive independent in practice?**

There is interference in the activities and decisions of the Executive by the Wolesi Jirga and it has extensively increased in the past five years. The legislature interferes in executive affairs through the selection process of high- and low-ranking government officials and by seeking business contracts from different ministries. These all are illegal and illegitimate requests and demands, and this is undermining the independence and transparency of the ministries.<sup>168</sup>

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<sup>160</sup> Interview with Dr Anwar ul-Haq Ahady.

<sup>161</sup> MoJ, "Constitution", 2004: Article 64(11).

<sup>162</sup> Thomas Ruttig, "The Start into the Better Governance Marathon: Ghani's first days", Afghan Analyst Network, [www.afghanistan-analysts.org/the-start-into-the-better-governance-marathon-ghanis-first-days/](http://www.afghanistan-analysts.org/the-start-into-the-better-governance-marathon-ghanis-first-days/) (accessed on 12 February 2015).

<sup>163</sup> MoJ, "Constitution", 2004: Article 64.

<sup>164</sup> MoJ, "Constitution", 2004: Article 65.

<sup>165</sup> MoJ, "Constitution", 2004: Article 77.

<sup>166</sup> Thomas Ruttig, "The President's CEO Decree: Managing rather than executive powers (now with full translation of the document)", Afghan Analyst Network, [www.afghanistan-analysts.org/the-presidents-ceo-decree-managing-rather-than-executive-powers/](http://www.afghanistan-analysts.org/the-presidents-ceo-decree-managing-rather-than-executive-powers/) (accessed on 13 February 2015).

<sup>167</sup> MoJ, "Constitution", 2004: Article 69.

<sup>168</sup> Interview with Dr Anwar ul-Haq Ahady.



In May 2007, Wolesi Jirga dismissed the Foreign Minister, Rangin Dadfar Spanta, for failing to stop the deportation of 52,000 Afghan refugees from Iran.<sup>169</sup> President Karzai rejected Wolesi Jirga's decision and asked Spanta to continue his duty as acting minister. After the Supreme Court concluded that Karzai's decision was not constitutional, Spanta left his position in January 2010.<sup>170</sup>

In 2011, the Parliament gave a vote of no confidence to the Attorney General Mohammad Ishaq Aloko, who compiled the original dossiers of 62 elected MPs accused of fraud. The Special Elections Tribunal Court established by President Karzai planned their removal. The Parliament was not able to remove Aloko, because he had the support of President Karzai.<sup>171</sup>

In 2012 the Afghan Parliament gave a vote of no confidence to both the Minister of Defence and the Minister of Interior. The decision of the Parliament was not implemented, however. The excuse was that President Karzai was searching for their replacement. In 2010, the previous Interior Minister and National Security Director were also removed from their posts, because Pakistan considered them to be hostile to their interests.<sup>172</sup>

In 2013, the former Interior Minister Mujtaba Patang received a vote of no confidence from Wolesi Jirga for the worsening security situation on the main southwest-bound highway from the capital. Patang criticised the MPs' decision and stated that "the decision by parliamentarians was a political conspiracy,"<sup>173</sup> because he refused many of their requests to appoint their patrons to the government positions. At first, President Karzai refused to let the Minister of Interior go; later, however, the minister was asked to leave.

In 2013, Wolesi Jirga initiated an impeachment process against seven ministers who failed to spend 50 per cent of their designated development budget. The ministers were summoned and questioned, but, allegedly, due to some political and personal commitments of some parliamentarians with these ministers, the Parliament was not able to proceed with their impeachment vote.<sup>174</sup>

## 2.2 GOVERNANCE

**Score: 75**

### 2.2.1 Transparency (law) – To what extent are there regulations in place to ensure transparency in relevant activities of the Executive?

<sup>169</sup> BBC, "Afghan Foreign Minister dismissed over refugees," BBC, [http://news.bbc.co.uk/2/hi/south\\_asia/6649963.stm](http://news.bbc.co.uk/2/hi/south_asia/6649963.stm) (accessed on 13 February 2015).

<sup>170</sup> Fabrizio Foschini, "Parliament sacks key ministers: Two birds with one stone", *Afghan Analyst Network*, [www.afghanistan-analysts.org/parliament-sacks-key-ministers-two-birds-with-one-stone/](http://www.afghanistan-analysts.org/parliament-sacks-key-ministers-two-birds-with-one-stone/) (accessed on 14 February 2015).

<sup>171</sup> Scott Worden, "A guide to Afghan impeachment", *Foreign Policy*, <http://foreignpolicy.com/2011/07/15/a-guide-to-afghan-impeachment/> (accessed on 17 February 2015).

<sup>172</sup> Allisa J. Rubin and Sangar Rahimi, "Afghan President Moves to Reassure Allies After Security Ministers Are Dismissed", *The New York Times*, [www.nytimes.com/2012/08/06/world/asia/karzai-says-afghan-ministers-to-be-replaced.html](http://www.nytimes.com/2012/08/06/world/asia/karzai-says-afghan-ministers-to-be-replaced.html) (accessed on 14 February 2015).

<sup>173</sup> Aljazeera, "Karzai contests firing of Afghan minister", *Aljazeera*, [www.aljazeera.com/news/middleeast/2013/07/201372214513133381.html](http://www.aljazeera.com/news/middleeast/2013/07/201372214513133381.html) (accessed on 13 February 2015).

<sup>174</sup> Obid Ali, "Budget Through, Impeachments pending, Wolesi Jirga Went into Winter Recess," *Afghan Analyst Network*, [www.afghanistan-analysts.org/budget-through-impeachments-pending-wolesi-jirga-went-into-winter-recess/](http://www.afghanistan-analysts.org/budget-through-impeachments-pending-wolesi-jirga-went-into-winter-recess/) (accessed on 18 February 2015).

Article 50 of the Constitution stipulates that citizens have the right of access to information without any limitation, except when it harms the rights of others or threatens public security. This includes the activities of the Executive at the national, provincial and district levels.<sup>175</sup>

Parliament and the Executive delayed the “Right to Know” or “Access to Information” law for several years, but finally, President Ghani passed and signed it on 18 October 2014. The practical implications of the law are still not known and the current law requires further improvements to meet international best practices.<sup>176</sup> For example, the law does not penalise public/government officials for not providing information to the public.

There are no provisions in the Constitution or in the Access to Information Law that would require government organisations or the Cabinet to record their activities and meetings and make them publicly available. Only the Public Finance and Expenditure Management Law (PFELM) requires the Ministry of Finance to publish information about the budget. Once the Executive budget is approved by the Parliament, “the Ministry of Finance shall submit quarterly progress reports to the government and the President, and publish it on its website.”<sup>177</sup>

All members of the Executive have to register their assets. Based on the Constitution, the wealth of the President, vice-presidents and ministers shall be registered, reviewed and published prior to and after their term in office.<sup>178</sup> The Constitution does not include deputy ministers, governors and other members of the Executive. However, the 2008 Law on Supervision and Implementation of Anti-Corruption Strategies (LSIACS) obligates all members of the Executive to register their assets with the High Office of Oversight and Anti-Corruption.<sup>179</sup> (For further details please refer to the Anti-Corruption Agency Pillar.)

## **Score: 25**

### **2.2.2 Transparency (practice) – To what extent is there transparency in relevant activities of the Executive in practice?**

Even though the law does not require them to do so, most ministries and other government institutions have voluntarily established media centres and a website, which make information on their activities available to the general public. This includes the activities of the Executive, such as press conferences of the President and the ministers, and the summary of Cabinet meetings. Furthermore, information is also available from the websites of the Government Media and Information Centre, the President’s Office, CEO, and the ministries’ websites.

The meetings, press conferences and speeches of the President, CEO and ministers are also recorded. Some of these are made available to the public in English and the national languages, whereas others are still under construction or coming soon. The meeting minutes of the Cabinet and the Council of Ministers are not made available, but a summary of Cabinet meetings is published, albeit irregularly by the Government Media and Information Centre. On the OAACoMS website, the latest summary report of the Cabinet meeting is from May 2014. It should be noted that the financial statements (*Qatia* Accounts) of the Executive are only published by the SAO.

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<sup>175</sup> MoJ, “Constitution”: Article 50.

<sup>176</sup> Integrity Watch Afghanistan, “Access to Information Laws Still needs Improvement before President Signs on It”, Integrity Watch Afghanistan, [www.iwaweb.org/news/news0018\\_ati\\_law\\_still\\_needs\\_improvements.html](http://www.iwaweb.org/news/news0018_ati_law_still_needs_improvements.html) (accessed on 17 February 2015).

<sup>177</sup> Ministry of Justice, “Afghanistan’s Public Finance and Expenditure Management Law”, Official Gazette 544 (1362AH [1983]): Article 54.

<sup>178</sup> MoJ, “Constitution”, 2004: Article 154.

<sup>179</sup> MoJ, “Anti-Corruption Strategies”, 2008: Article 12(2).

The Afghan national budget is published every year by the Ministry of Finance after the approval of the Parliament. In order to improve government transparency, the budget is reviewed collectively by senior officials of the Ministry of Finance, civil society, MPs, members of provincial councils, and other national and international stakeholders in the presence of the media. The Afghan Coalition for Transparency and Accountability (ACTA) performs the revision of the budget and the report is published by Equality for Peace and Development.<sup>180</sup>

Even though senior level officials and public officials of various levels and professions are required to register their assets with the HOOAC,<sup>181</sup> most government officials have failed to register their assets. The HOOAC claims that only around 8000 government officials in different categories have registered their assets.<sup>182</sup>

**Score: 50**

### **2.2.3 Accountability (law) – To what extent are there provisions in place to ensure that members of the Executive have to report and be answerable for their actions?**

The Constitution sets the rules and laws for the oversight of the Executive, in which Wolesi Jirga is given the authority to oversee the Executive. The members of the Executive Branch are obligated by law to give oral or written answers for their decisions on issues to any commission of both houses of the Parliament.<sup>183</sup> There are no constitutional provisions that require the Executive to consult with the public/special groups in making decisions on policies.

The Constitution allows the Loya Jirga, which is made up from both houses of Parliament and the heads of provisional assemblies, to amend the Constitution, impeach the president and decide on matters of national sovereignty.<sup>184</sup>

In the case of crimes against humanity, national treason, misconduct or violation of the Constitution, members of the Executive can be held accountable for their conduct.<sup>185</sup> For example, if the President is accused of a crime, one-third of the members of Wolesi Jirga can present a motion to ask the President to appear before Wolesi Jirga. If the motion is approved by two-thirds of the members of Wolesi Jirga, the Loya Jirga will convene within one month. If the Loya Jirga approves the accusation by a two-thirds majority, the President is dismissed from his duty and his case turned over to a special court.<sup>186</sup>

According to Article 12, Paragraph 1 of the Audit Law, the Executive Branch is audited on an annual basis by the SAO, and the report on the government financial statement called Qatia Accounts<sup>187</sup> is submitted to the President and the National Assembly.<sup>188</sup>

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<sup>180</sup> Equality for Peace and Development, "Independent Review of the Afghanistan 1394 Draft National Budget", [www.epd-afg.org/launch-of-epds-independent-review-of-the-afghanistan-1394-national-budget-assessing-the-budgets-fiscal-sustainability-and-reforms/](http://www.epd-afg.org/launch-of-epds-independent-review-of-the-afghanistan-1394-national-budget-assessing-the-budgets-fiscal-sustainability-and-reforms/) (accessed on 16 February 2015).

<sup>181</sup> High Office of Oversight and Anti-Corruption, "Public Officials' Asset Declaration Strategy, Draft", Department of Assets Registration (2009): 3–4.

<sup>182</sup> Rafi Sidiqi, "Officials Failed to Register Assets", Tolo News, [www.tolonews.com/en/afghanistan/14945-officials-fail-to-register-assets-for-anti-corruption-effort](http://www.tolonews.com/en/afghanistan/14945-officials-fail-to-register-assets-for-anti-corruption-effort) (accessed on 16 February 2015).

<sup>183</sup> Ibid, Article 93.

<sup>184</sup> BBC, "Afghanistan's Loya Jirga: Question & Answer", BBC, [www.bbc.com/news/world-asia-25024163](http://www.bbc.com/news/world-asia-25024163) (accessed on 17 February 2015).

<sup>185</sup> Ibid, Article 69.

<sup>186</sup> MoJ, "Constitution", 2004: Article 69.

<sup>187</sup> Qatia is the government's financial statement (Special Inspector General for Afghanistan Reconstruction, 2010).

<sup>188</sup> Supreme Audit Office, "Independent Audit Report of the Auditor General on Qatia Accounts of the Government", Supreme Audit Office, [http://sao.gov.af/Content/files/Qatia%20Audit%20Report%201392\\_English%20Final.pdf](http://sao.gov.af/Content/files/Qatia%20Audit%20Report%201392_English%20Final.pdf) (accessed on 18 February 2015).

**Score: 25**

**2.2.4 Accountability (practice) – To what extent is there effective oversight of executive activities in practice?**

In Afghanistan the ministers are summoned and dismissed by the Wolesi Jirga quite often. Legally, the Parliament is strong and has the power to oversee the activities of the Executive, but the majority of MPS are not well educated, aware and mindful of their responsibilities. For instance, President Karzai nominated judges who were not qualified for their jobs, but the Parliament still approved them. In contrast, President Karzai also nominated some judges who were highly qualified for their jobs, but they were rejected by the Parliament.<sup>189</sup>

In 2011 the President established a Special Election Tribunal Court to probe the parliamentary election fraud of 62 members of the Wolesi Jirga. A number of Wolesi Jirga members boycotted the establishment of this court, because it was against the Constitution.<sup>190</sup>

As noted above, except in the case of “national sovereignty,” nothing in the Constitution requires the President to consult with the people on other issues (except referendum). However, if the President desires, he has been given the constitutional right to do so. For example, President Karzai called an assembly of 2500 Afghan elders to discuss the Bilateral Security Agreement (BSA) in 2013. The President assembled the elders because he believed the BSA was an issue of national sovereignty.<sup>191</sup>

In addition, the President of Afghanistan has not abided by the decisions made by the National Assembly. Like his predecessor, Mohammad Ashraf Ghani has not followed the law and the resolutions of the National Assembly. When President Ghani took office in September 2014, he issued a decree, which changed the status of the sitting ministers as acting. The Law on Acting Affairs of Ministries allows an acting minister to work for up to two months.<sup>192</sup> However, Ghani failed to introduce his Cabinet within two months, and the Wolesi Jirga issued an ultimatum on 20 December 2014 to the President to introduce his Cabinet immediately – the Wolesi Jirga ultimatum came 81 days after Ghani took Office. President Ghani ignored the Wolesi Jirga’s resolution and introduced his Cabinet 110 days after he took office.

The failure of the National Unity Government to form a new Cabinet, which has allowed the ministers from the Karzai administration to function as ministers and continue their duties as acting ministers beyond the allowed two months, according to some experts, is an example of violation of the constitutional provisions by the Ghani administration.<sup>193</sup> The Ghani administration found a loophole in the law to justify the delay of introducing its Cabinet. When the tenure of the acting ministers expired after 60 days, President Ghani removed them and appointed their deputy ministers as acting ministers for another 60 days.<sup>194</sup> Although Ghani’s appointment of the deputy ministers was not against the letter of the law, it did violate the spirit of the law.

<sup>189</sup> Interview with Dr Anwar ul-Haq Ahady.

<sup>190</sup> United Nations Missions Assistance in Afghanistan, <http://unama.unmissions.org/Default.aspx?ctl=Details&tabid=12329&mid=15870&ItemID=34111> (accessed on 15 February 2015).

<sup>191</sup> BBC, “Afghanistan’s Loya Jirga: Question & Answer”, BBC, [www.bbc.com/news/world-asia-25024163](http://www.bbc.com/news/world-asia-25024163) (accessed on 18 February 2015).

<sup>192</sup> The Ministry of Justice, “Law on Acting Affairs of Ministries”, Official Gazette 1051 (1390AH [2011]): Article 1.

<sup>193</sup> Sayed Tariq Majidi, “Danish: All Three Branches Are Guilty of Constitutional Violations”, Tolo News, [www.tolonews.com/en/afghanistan/17292-danish-all-three-branches-are-guilty-of-constitutional-violations](http://www.tolonews.com/en/afghanistan/17292-danish-all-three-branches-are-guilty-of-constitutional-violations) (accessed on 18 February 2015).

<sup>194</sup> BBC Persian, “Zarbul ajal majles Afghanistan beraye muarafi azaye kabina”, BBC Persian, [www.bbc.com/persian/afghanistan/2014/12/141220\\_k02-afghan-parliament-cabinet](http://www.bbc.com/persian/afghanistan/2014/12/141220_k02-afghan-parliament-cabinet) (accessed on 30 September 2015).

The OAACoMS and the President's Office are audited on a yearly basis by the SAO and the reports of the audits are published as part of the Qatia.<sup>195</sup>

**Score: 50**

#### **2.2.5 Integrity (law) – To what extent are there provisions in place to ensure the integrity of the members of the Executive?**

The Executive does not have an exclusive code of conduct but there is a code of conduct for high-ranking officials of the state, referred to as the Code of Ethical Conduct for Officials of the Three Branches of GoIRA. According to this code, the members of the Executive should be honest and humble, open to criticism, have integrity, avoid conflict of interest and not discriminate based on ethnicity or religion.<sup>196</sup> In addition, the members of the Executive should not hold other positions or engage in business either themselves or through their relatives within the state institutions or in the private sector.<sup>197</sup>

There are no provisions in the code of conduct that regulate the exchange of gifts and hospitality for members of the Executive. In addition, the code of conduct does not have any provisions dealing with post-employment restrictions. The members of the Executive can immediately enter a private business after their employment.

When a civil servant in any government institution becomes aware of an illegal action of another civil servant, he/she must report this to the relevant director.<sup>198</sup> According to Article 14 of the HOOAC Law, a whistleblower is immune from any type of threat or pressure from any person or organisation, if he/she provides information about cases relating to corruption.<sup>199</sup>

**Score: 25**

#### **2.2.6 Integrity (practice) – To what extent is the integrity of members of the Executive ensured in practice?**

There are some cases where members of the Executive have violated the law. For instance, five former ministers of the Afghan government are accused of misusing their authority in the Kabul Bank corruption case and are currently under prosecution by the AGO.<sup>200</sup> This and other similar cases, such as the major conflict of interest cases discussed below where laws and regulations were ignored and undermined, have created doubts about the integrity of the government institutions.

The members of the Executive can move back and forth between business and government positions (revolving door) without any legal restrictions. There are examples of officials who have started their own small or large businesses after their executive jobs. "We also have examples of

<sup>195</sup> Supreme Audit Office, "Audit Report on Qatia Accounts", Supreme Audit Office (1393AH [2014]): Annex 1.

<sup>196</sup> The Ministry of Justice, "Code of Ethical Conduct for Officials of the Three Branches of Government of Islamic Republic of Afghanistan", Official Gazette 1051 (1389AH [2011]): Article 4.

<sup>197</sup> MoJ, "Code of Ethical Conduct", 2011: Article 33.

<sup>198</sup> MoJ, "Code of Ethical Conduct", 2011: Article 33.

<sup>199</sup> Interview with Sayed Mohammad Hashimi.

<sup>200</sup> Government Media and Information Center, "Attorney General Office of Afghanistan: Official letters have been dispatched to seven countries for certification of the assets related to the Kabul Bank case", Government Media and Information Center, [www.gmic.gov.af/english/economical/360-attorney-general-office-of-afghanistan-official-letters-have-been-dispatched-to-seven-countries-for-certification-of-the-assets-related-to-the-kabul-bank-case-](http://www.gmic.gov.af/english/economical/360-attorney-general-office-of-afghanistan-official-letters-have-been-dispatched-to-seven-countries-for-certification-of-the-assets-related-to-the-kabul-bank-case-) (accessed on 19 February 2015).

officials, who had their own businesses prior to becoming part of the Executive although the President and the ministers cannot legally own businesses while in the government jobs”.<sup>201</sup>

Some members of the Executive bypass the law on conflict of interests by registering their businesses under the name of their relatives. For instance, the brother of President Karzai and the brother of the deceased first Vice-President Qasim Fahim had shares in the former Kabul Bank,<sup>202</sup> which was used to pay the salary of all the government employees.

Even though the law gives protection to whistleblowers for reporting misconduct, corruption and any illegal activity within government institutions, we have not come across any case of the law being used in practice.

## 2.3 ROLE

**Score: 50**

### 2.3.1 Public sector management (law and practice) – To what extent is the Executive committed to and engaged in developing a well-governed public sector?

Article 50 of the Constitution requires the Executive to effectively supervise and manage the work of the civil servants. The Civil Service Law was ratified in 2005 to “establish sound administration and to regulate the activities of the civil servants”.<sup>203</sup> The Civil Service Management Department of IARCSC is responsible for drafting and making policies for the appointment, supervision and monitoring of civil servants.<sup>204</sup>

Ministers/Director Generals supervise the civil servants’ activities on a regular basis. They evaluate the activities of their respective civil servants on an annual basis. Based on the evaluation results, the civil servants are given non-financial and financial incentives. The non-financial incentives are appreciation letters, merit certificates, rank increases and promotions.<sup>205</sup> The amount of the financial incentive is determined by the Ministry of Labour and Social Affairs in cooperation with the employee’s working ministry and the Ministry of Finance.<sup>206</sup>

A civil servant who does not carry out his/her duty may be disciplined in accordance with relevant legal regulations.<sup>207</sup> Besides effective supervision, the government is also responsible for planning and implementing economic, social, cultural and technological development programmes in the country.<sup>208</sup>

Since most of the services provided through the ministries are largely donor-funded projects, ministries do not feel a sense of accountability for these projects. The items the ministries’ audit can verify include the amount of salaries paid to the Afghan staff involved in these projects, computers purchased and fuel used by the ministries’ vehicles.<sup>209</sup>

**Score: 50**

<sup>201</sup> Interview with Sayed Mohammad Hashimi.

<sup>202</sup> Tolo News, “Former Bank Chairman, CEO jailed for 10 years”, Tolo News, [www.tolonews.com/en/afghanistan/17082-former-kabul-bank-chairman-ceo-jailed-for-10-years](http://www.tolonews.com/en/afghanistan/17082-former-kabul-bank-chairman-ceo-jailed-for-10-years) (accessed on 19 February 2015).

<sup>203</sup> Ministry of Justice, “The Afghanistan Civil Service Law”, Official Gazette 861 (1384AH [2005]): Article 1.

<sup>204</sup> MoJ, “Civil Service Law”, 2005: Article 12.

<sup>205</sup> Interview with Sayed Mohammad Hashimi.

<sup>206</sup> Ministry of Justice, “Labor Law”, Official Gazette 914 (1385AH [2007]): Article 65.

<sup>207</sup> MoJ, “Afghanistan Civil Service Law”, 2005: Article 29.

<sup>208</sup> MoJ, “Constitution”, 2004: Article 75.

<sup>209</sup> The Guardian, “Reforming Afghanistan: priorities for the next president”, The Guardian, [www.theguardian.com/global-development-professionals-network/adam-smith-international-partner-zone/reforming-afghanistan-priorities-president](http://www.theguardian.com/global-development-professionals-network/adam-smith-international-partner-zone/reforming-afghanistan-priorities-president) (accessed on 21 February).



### 2.3.2 Legal system – To what extent does the Executive prioritise public accountability and the fight against corruption as a concern in the country?

The Afghan government has launched several administrative reforms to combat corruption and increase accountability in the country. For instance, in 2008 President Karzai issued a decree to establish the High Office of Oversight and Anti-Corruption, the highest authority to coordinate and monitor anti-corruption strategies and to implement administrative and procedural reform in the country.<sup>210</sup> Another institution working on anti-corruption is the Independent Joint Anti-Corruption Monitoring and Evaluation Committee. This committee monitors and evaluates national and international efforts to fight corruption in Afghanistan. It reports the state of the fight against corruption to the public, the Parliament, the President, and international community.<sup>211</sup>

In July 2012, President Karzai issued Executive Decree No 45 to fight corruption, which partly came as a reaction to the debate in the international conference on Afghanistan in Tokyo, Japan. This decree created a mixed reaction among MPs, activists, experts and people at large. The decree was criticised by civil society and the Parliament, because it gave the government only three months to eliminate corruption. Priorities were outlined but there was no indication of who would pay the cost of anti-corruption at the central and provincial level.<sup>212</sup>

According to one interviewee, “the Executive has taken several institutional steps to fight corruption, but the result is very insignificant. On the contrary, corruption has increased.”<sup>213</sup> Both external observers and members of the government, especially the Executive Branch, complain about the lack of dedication in fighting corruption. For example, a deputy minister at the Ministry of Justice suggested that in order to fight corruption there must be political will and the implementation of the law, neither of which are there.<sup>214</sup> According to Integrity Watch Afghanistan (IWA), “the political will to fight corruption was abysmal during 13 years of President Karzai’s rule.”<sup>215</sup>

#### Recommendations:

- Staff should be appointed to senior posts in the Executive based on demonstrated integrity, leadership qualities, and technical and functional expertise in their respective fields, and vetted accordingly.
- Members of the Executive should register their assets and interests on a regular basis and non-compliance should be penalised.
- Government policy decisions should be made on the basis of thorough analysis and a clear, transparent and consultative process, supported by adequate technical expertise.
- Breaches of the Code of Conduct for Officials of the Three Branches of Government of the Islamic Republic of Afghanistan should be met with swift and appropriate sanctions.
- The power of the Presidency in Afghanistan should be reduced while interference by state institutions, the National Assembly and the international community in the day-to-day work of the Executive should be eliminated.

<sup>210</sup> High Office of Oversight and Anti-Corruption, “History of HOOAC,” High Office of Oversight and Anti-Corruption, <http://anti-corruption.gov.af/en/page/8463> (accessed on 21 February 2015).

<sup>211</sup> Independent Joint Anti-Corruption Monitoring and Evaluation Committee, “Independent Joint Anti-Corruption Monitoring and Evaluation Committee”, Home Page, [www.mec.af/#main](http://www.mec.af/#main) (accessed on 21 February 2015).

<sup>212</sup> Sayed Reza Kazemi, “Karzai’s Decree to Combat Corruption: Causes for Cautious Optimism?”, Afghan Analyst Network, [www.afghanistan-analysts.org/karzais-decree-to-combat-corruption-cause-for-cautious-optimism-2/](http://www.afghanistan-analysts.org/karzais-decree-to-combat-corruption-cause-for-cautious-optimism-2/) (accessed on 21 February 2015).

<sup>213</sup> Interview with Dr Anwar ul-Haq Ahady

<sup>214</sup> Interview with Sayed Mohammad Hashimi.

<sup>215</sup> Naser Timory and Sayed Ikram Afzali, “Taking on Corruption: Institutional Arrangement to Fight Corruption in Afghanistan,” Integrity Watch Afghanistan, 2015: 1.

### 3. THE JUDICIARY

#### Summary

The Judiciary has taken various steps to fight corruption within its organisation by establishing the Care and Control Department and has contributed to the study and fight against corruption in the country more broadly through the creation of the Kabul Anti-Corruption Court, although its efforts have not brought about significant changes. The Supreme Court has initiated a reform programme to simplify its procedures and the language of the court, and has conducted hundreds of on-the-job trainings for judges and administrative staff. However, the Judiciary is not open to critique. It has rejected most of the reports published about its activities as baseless and exaggerated.

The Supreme Court is not able to be instrumental regarding checks and balances between the organs of the state. The jurisdiction of the Supreme Court to interpret the Constitution is disputed and the Supreme Court is not given the authority to review the actions and decisions of the Executive and Legislative. However a lower court can request the Supreme Court to review laws.

#### Organisation and structure

The Judiciary of the Islamic Republic of Afghanistan is comprised of the Supreme Court, courts of appeal and primary courts. The Supreme Court is the highest judicial organ, leading the judiciary power in Afghanistan.<sup>216</sup> The Supreme Court is referred to as the High Council of the Supreme Court (Shura-e-Aali Stera Makama). It has nine members nominated by the President and endorsed by Wolesi Jirga. The Supreme Court has both judicial and administrative authority within its organisation, but has no judicial or administrative authority over the Executive and the Legislative. With the approval of the President, the Supreme Court appoints and removes judges, and assesses the conformity of laws, decrees, and international conventions with the Constitution.

In the capital of each province, the Courts of Appeal have the following primary courts under its jurisdiction: Central Provincial Primary Court, Juveniles' Court, Commercial Primary Court and Family Issues Primary Court. The Courts of Appeal oversee the decisions of the lower courts. The Courts of Appeal may correct, overturn, amend, confirm or repeal the rulings and decisions of a lower court.<sup>217</sup> The District Primary Courts are established in each district of a province. There are 398 districts within the 34 provinces. Each District Primary Court deals with all ordinary criminal, civil and family cases.<sup>218</sup>

The Supreme Court has the authority to establish further Diwans within the primary court, appeal court, and the Supreme Court.<sup>219</sup> Based on this provision, the Narcotics Primary Court and the Court of Appeals were established respectively within Kabul's primary and appeal courts in 2004. In case of a crime, which also leads to dismissal from office, a special court is formed for the trial of the President, ministers and members of the Supreme Court.<sup>220</sup>

In addition to the formal court system, there is an informal court system called *Jirga* (Council of Elders and Wise) and *Shura* (Council of the Ulama and Wise) in almost every village in Afghanistan.

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<sup>216</sup> MoJ, "Constitution", 2004: Article 116.

<sup>217</sup> The Ministry of Justice, "Law on the Structure and Competencies of Courts", Official Gazette 851 (1984AH [2005]): Article 33.

<sup>218</sup> MoJ "Competencies of Courts", 2005: Article 48.

<sup>219</sup> MoJ "Competencies of Courts", 2005 Article 32 and 40.

<sup>220</sup> MoJ, "Constitution", 2004: Article 69, 78 and 127.

Even though these are not officially recognised by the law of the country as legal entities, they resolve most of the disputes in the country.<sup>221</sup>

## Assessment

### 3.1 CAPACITY

**Score: 75**

#### 3.1.1 Resources (law) – To what extent are there laws seeking to ensure appropriate salaries and working conditions of the Judiciary?

The Supreme Court prepares the budget of the Judiciary and it is presented to the National Assembly as part of the national budget.<sup>222</sup> The law does not require that the Judiciary's budget be apportioned a certain percentage of the total national budget, but rather an emphasis is given to the adequacy of the financial resources of the Judiciary.

The Constitution places the provision of the salary of the judges next to the vice-presidents and other high-ranking officials.<sup>223</sup> Still, the salaries of judges were very low until 2008. In 2008, the Judiciary decided to increase the salaries of judges. The final decision came in 2010, in which judges were paid between AFN 20,000 (US\$400) and 40,000 (US\$800).<sup>224</sup> With the Law for Regulating Salaries of the Government's High-Ranking Officials passed in October 2013, the salary of the lowest ranking judge is four times the salary of the highest civil servant. The lowest ranking judge is now paid AFN 81250 (US\$1425).<sup>225</sup> This salary is much higher than that of the majority of practicing lawyers.

Nonetheless, there is no mechanism securing salary adjustment with regards to inflation. In addition, one type of disciplinary action against a judge is the reduction of salary.<sup>226</sup>

**Score: 50**

#### 3.1.2 Resources (practice) – To what extent does the Judiciary have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

In September each year, a representative of the Judiciary is invited to a meeting of senior officials at the MoF to justify its budget. In the fiscal year 2015 (1394), the Judiciary was given a budget of AFN 3.184 billion (US\$55.86 million).<sup>227</sup> The budget is sufficient for salaries and maintenance, but not enough to build and improve the infrastructure. There is an acute need for new buildings. According to the Judiciary, it needs 426 buildings for judges' offices and courthouses in the provinces.<sup>228</sup> In the last decade, the number of vehicles of the Judiciary has increased from 30 to 254, but it requires

<sup>221</sup> A. Wardak, "State and Non-State Justice Systems in Afghanistan: The Need for Synergy", *Journal of International Law* 32/5 (2011): 1305–1324.

<sup>222</sup> MoJ, "Constitution", 2004: Article 125.

<sup>223</sup> MoJ, "Constitution", 2004: Article 155.

<sup>224</sup> D. Dadgar, "Guzaresh nazarat as wazeyat wa amalkard mahakem wa system Qazayee dar Afghanistan", Afghanistan Independent Human Rights Commission, [www.aihrc.org.af/home/article/652](http://www.aihrc.org.af/home/article/652) (accessed on 6 August 2015).

<sup>225</sup> The Ministry of Justice, "Law for Regulating Salaries of High Ranking Government Officials", Official Gazette 1121 (1392AH [2013]): Article 3 and 4.

<sup>226</sup> Interview with a Judge, name withheld on request, 28 March 2015.

<sup>227</sup> Ministry of Finance, "1394 National Budget", Directorate of General Budget (1394[2015]): p. 65.

<sup>228</sup> Mohammad Osman Zubal, Sal Nama Qaza 1, Supreme Court (1393AH [2014]): 136.

about 1000 vehicles.<sup>229</sup> According to the Afghanistan Independent Human Rights Commission, the insufficiency of resources has contributed to the malfunctioning of the Judiciary.<sup>230</sup>

In order to become a judge, one has to complete and pass a two-year professional training course called Setaz Qazayee conducted by the Judiciary. To date, 1100 judges have graduated from this course.<sup>231</sup> There are also on-job training courses for judges. In cooperation with USAID, the Max Plank Institute and IIPEC, the Judiciary has conducted 234 courses in which around 5000 serving judges and administrative servants were trained.<sup>232</sup> Around 400 serving judges have visited, or received short-term training scholarships in Egypt, USA, Malaysia, India, France and other countries.<sup>233</sup> Even though training and assistance have been provided by the above-mentioned countries and institutions, there is still a great need for specialisation in criminal law, financial law, national security and anti-corruption.

From the international donors, the US has been the major supporting country in the justice sector. The US Department of State has spent at least US\$223 million on the justice sector in Afghanistan.<sup>234</sup> The largest portion of this fund goes through the Justice Sector Support Programme (JSSP). From 2010 to 2013, the JSSP received \$144 million.<sup>235</sup> The JSSP has three major components: 1) regional justice sector training, 2) case management system (CMS), and 3) institutional/administrative capacity-building. Except for the CMS component, the remaining components of the JSSP did not have any significant impact. The CMS tracks criminal cases from arrest to incarceration. "After the Afghan government officials piloted the CMS in Kabul correctional facilities, they discovered 128 inmates had over-served their sentences, in some cases by years, but remained in detention because their files had fallen through the cracks."<sup>236</sup> Other programmes to support the justice sector in Afghanistan include support for anti-corruption tribunals, Afghan women Judges associations and capacity-building programmes among others.

Egypt is not a financial donor but an important player in training Afghan judges. Based on a memorandum of understanding between the Afghanistan Judiciary and the Ministry of Justice of Egypt, the latter has committed to assist the Supreme Court in interpretation of civil and criminal laws, training Afghan judges in Egypt, updating the curriculum of Setaz Qazayee and exchanging technical knowledge between the two countries.<sup>237</sup>

## **Score: 50**

### **3.1.3 Independence (law) – To what extent is the Judiciary independent by law?**

The Judiciary, as one of the three branches of state is set in Article 116 of the Constitution: "The Judiciary shall be an independent organ of the state of the Islamic Republic of Afghanistan."<sup>238</sup> The independence of judges is ensured in the laws, which prevent undue interference and influence. The

<sup>229</sup> Zubal, 2014: 69.

<sup>230</sup> Hasht-e-Subh, "Guzarash nazarat as wazayat wa amalkard mahakem wa system Qazayee dar Afghanistan", Hash-e-Subh, [http://8am.af/oldsite.php?option=com\\_content&view=article&id=20722:1390-05-03-16-38-37&catid=58:2008-10-31-09-35-33&Itemid=543](http://8am.af/oldsite.php?option=com_content&view=article&id=20722:1390-05-03-16-38-37&catid=58:2008-10-31-09-35-33&Itemid=543) (accessed 24 March 2015).

<sup>231</sup> Zubal, 2014: 52.

<sup>232</sup> Zubal, 2014: 47.

<sup>233</sup> Zubal, 2014: 47.

<sup>234</sup> Special Inspector General for Afghanistan Reconstruction, "Support for Afghanistan Justice Sector", Special Inspector General for Afghanistan Reconstruction, 2014: 2.

<sup>235</sup> Special Inspector General for Afghanistan Reconstruction, "Department of State's Afghanistan Justice Sector Support Program II", Special Inspector General for Afghanistan Reconstruction, 2015: 2.

<sup>236</sup> US Department of State, "Administration of Justice," US Department of State, [www.state.gov/j/inl/narc/c27187.htm](http://www.state.gov/j/inl/narc/c27187.htm) (accessed on 28 September 2015).

<sup>237</sup> Zubal, 2014: 49.

<sup>238</sup> MoJ, "Constitution", 2004: Article 116.

Regulation of Judicial Conduct for Judges of Islamic Republic of Afghanistan says that a judge has the right to freely express his/her opinion and no judge is allowed to impose his/her opinion on another judge.<sup>239</sup> The Judiciary is headed by the Supreme Court, which is comprised of nine member judges, appointed by the President and approved by Wolesi Jirga.<sup>240</sup> The President appoints one of the Supreme Court members as the Chief Justice. With the approval of the President, the remaining judges of the Judiciary are appointed by the Supreme Court.<sup>241</sup> The National Assembly does not play any role in the appointment of judges except the members of the Supreme Court. Judges are not appointed for life, but their retirement is contingent upon 40 years of service or 65 years of age, whichever comes first.<sup>242</sup> “The Supreme Court when needed may, before forwarding the issue of retirement of a 65-year-old judge to the authorities, extend his/her employment for another 10 years if the judge is knowledgeable with academic and professional experience. The approval for continuation of service shall be renewed every year.”<sup>243</sup>

No organ of the state has the authority to amend any provisions in the Constitution regarding the Judiciary. To amend a related provision, a commission comprised of the government, National Assembly and the Supreme Court is formed by a presidential decree to prepare the draft of a proposal. To approve this draft amendment, the Loya Jirga, which is comprised of the National Assembly, 34 provincial councils, and 398 district councils, is convened to approve it with a two-thirds majority.<sup>244</sup>

Afghanistan does not have a separate Judicial Services Commission. The Supreme Court has the authority to appoint, remove and transfer judges according to the provisions of law.<sup>245</sup> The Supreme Court runs a two-year professional judicial training course (Setaz Qazayee) for Law and Sharia graduates who want to become a judge. Upon successful completion of this course, the graduates are suggested to the President for appointment.<sup>246</sup>

There is a second category of judges referred to as “Judges of Insecure Areas.”<sup>247</sup> These judges are graduates of Law and Sharia but they do not go through the Setaz Qazayee training. They are sent to areas affected by war, where the Setaz Qazayee graduates are not willing to go. The Supreme Court hires its administrative staff according to the Civil Servants Law.<sup>248</sup> No other organ, including the National Assembly, the IRCSC or civil society, has any role in appointing judges.

The first three judges are appointed by the President for four years, the next three for seven years, and the last three are appointed for ten years, totalling nine members in the Supreme Court.<sup>249</sup> The members of the Supreme Court can be dismissed by the Wolesi Jirga. If more than one-third of the Wolesi Jirga requests a trial for the Chief Justice or a member of the Supreme Court after being accused of committing a crime related to job performance or any other crime, it must be approved by a two-third majority of all members of the Wolesi Jirga. Thereafter, the accused shall be dismissed and referred to a special court.<sup>250</sup>

<sup>239</sup> Supreme Court, “Regulation of Judicial Conduct for Judges of Islamic Republic of Afghanistan”, Supreme Court (1386AH [2007]): Articles 1–24.

<sup>240</sup> MoJ, “Constitution”, 2004: Article 116.

<sup>241</sup> MoJ, “Constitution”, 2004: Article 132.

<sup>242</sup> MoJ, “Competencies of Courts”, 2005: Article 62.

<sup>243</sup> MoJ, “Competencies of Courts”, 2005: Article 62.

<sup>244</sup> MoJ, “Constitution”, 2004: Article 150.

<sup>245</sup> MoJ, “Constitution”, 2004: Article 60.

<sup>246</sup> MoJ, “Constitution”, 2004: Article 58.

<sup>247</sup> Interview with a Judge, name withheld on request, 28 March 2015. (See also Zubal, 2014).

<sup>248</sup> MoJ, “Competencies of Courts”, 2005: Article 65.

<sup>249</sup> MoJ, “Constitution”, 2004: Article 117.

<sup>250</sup> MoJ, “Constitution”, 2004: Article 127.

If a judge, other than a Supreme Court judge, is accused of a crime, the Supreme Court considers the case. After hearing the case, if the Supreme Court finds the charges to be valid, it presents a proposal to the President to dismiss the judge. After the presidential approval, the accused is tried and punished according to the provisions of the law.<sup>251</sup> There are elaborate provisions regarding the transfer of judges, which prevent arbitrary decisions being made by the Supreme Court. The transfer of judges from one post to another does not happen before three years in the job, except at his/her own request.<sup>252</sup> Transferring a judge at grade level 1 is proposed by the Supreme Court and approved by the President. Transfer of judges at grade level 2 and lower grades is proposed by the General Administration Directorate and approved by the Chief of the Supreme Court.<sup>253</sup>

After a service of 40 years or at the end of 65 years of age, a judge can go into retirement.

**Score: 25**

### **3.1.4 Independence (practice) – To what extent does the Judiciary operate without interference from the government or other actors?**

The Supreme Court of Afghanistan, as the highest organ of the Judiciary, was re-established in 2007. According to a retired member of the Supreme Court, the Afghanistan Judiciary was an independent and effective organ until the coup of 1973.<sup>254</sup> Thereafter, it has been meddled with by the political ideologies of the Communists (1979–1992) and the Islamists (1992–2001). Since its re-establishment, there has been no change to its constitutional foundation.

As mentioned above, all judges should be Setaz Qazayee graduates, except judges in the insecure areas. According to a retired member of the Supreme Court, the recruitment of judges is fair and transparent.<sup>255</sup> Upon successful completion of the course, the graduates are appointed as judges. The Supreme Court had to hire non-Setaz Qazayee graduates from Law, Sharia and Madrasas as judges and send them to non-secure areas. In addition, there are judges from previous regimes who do not have professional legal training. The Supreme Court has discharged some of these judges, but still kept others in their positions.<sup>256</sup>

The Supreme Court sent 77 judges to jail from 2007 to 2014.<sup>257</sup> However, there are cases where judges have been apparently dismissed for criticising the Supreme Court. For example, in October 2014, the Supreme Court dismissed the Head of the Uruzgan Appeal Court after he had claimed that the Supreme Court was corrupt. The Supreme Court defended its decision by stating that he did not have a legal education.<sup>258</sup> Yet, the same Supreme Court had appointed him to the job based on his qualifications. When President Ghani took office, he called the Judiciary corrupt. The Supreme Court reacted to the comment and requested that the President check his source of information.<sup>1</sup> A few days later the Chief Justice resigned.<sup>1</sup>

Though the Constitution guarantees the institutional and individual independence of the Judiciary and each judge, the independence of both the Judiciary and judges is undermined by government

<sup>251</sup> MoJ, "Constitution", 2004: Article 132.

<sup>252</sup> MoJ, "Competencies of Courts", 2005: Article 63.

<sup>253</sup> MoJ, "Competencies of Courts", 2005: Article 60.

<sup>254</sup> Interview with Mohammad Omar Babrakzai, Retired Member of Supreme Court, Kabul, 8 March 2015.

<sup>255</sup> Interview with Mohammad Omar Babrakzai.

<sup>256</sup> Hasht-e-Subh, "Guzareh nazarat as wazayat wa amalkard mahakem wa system Qazayee dar Afghanistan," Hash-e-Subh, [http://8am.af/oldsite.php?option=com\\_content&view=article&id=20722:1390-05-03-16-38-37&catid=58:2008-10-31-09-35-33&Itemid=543](http://8am.af/oldsite.php?option=com_content&view=article&id=20722:1390-05-03-16-38-37&catid=58:2008-10-31-09-35-33&Itemid=543) (accessed 24 March 2015).

<sup>257</sup> Zhubal, 2014: 154.

<sup>258</sup> Sayed Tariq Majidi, "Supreme Court Dismisses Uruzgan Head Judge," Tolo News, [www.tolonews.com/en/afghanistan/16738-supreme-court-dismisses-uruzgan-head-judge](http://www.tolonews.com/en/afghanistan/16738-supreme-court-dismisses-uruzgan-head-judge) (accessed 24 March 2015).



intervention and power mongers.<sup>259</sup> The government agencies and people with economic and political power interfere in the affairs of the Judiciary by requesting/demanding special favours and treatment.

## **3.2 GOVERNANCE**

**Score: 50**

### **3.2.1 Transparency (law) – To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the Judiciary?**

The Constitution, the Anti-Corruption Law and the Law on the Structure and Competencies of Courts (LSCC) obligate the judges to register their assets. Article 75 of LSCC states that “judges of the courts and authorities in charge of the Documents and Deeds Registration Directorate shall be duty bound to register their real and unreal estates before assuming responsibility.”<sup>260</sup> The judges register their assets with the HOOAC. The HOOAC verifies the registered assets and publishes them if it is deemed necessary by the government or the HOOAC.<sup>261</sup>

According to Article 128 of the Constitution, “in the courts in Afghanistan, trials shall be held openly and every individual shall have the right to attend in accordance with the law. In situations clarified by law, the court shall hold secret trials when it considers it necessary, but the pronouncement of its decision shall be open in all cases.”<sup>262</sup> The LSCC further emphasises the necessity of open trials. It states, “the court may convene the trials in a closed procedure only if they are legally required.”<sup>263</sup>

The LSCC requires the Supreme Court to have its own publication to unify judicial methodology. The Judiciary can publish the final decisions of the courts, if it sees a need for it.<sup>264</sup> Giving such discretion to the Supreme Court weakens transparency and access to information. There are no specific provisions that obligate the Judiciary to publish information on the appointment and removal of judges.

**Score: 50**

### **3.2.2 Transparency (practice) – To what extent does the public have access to judicial information and activities in practice?**

The Department of Publication of the Supreme Court is in charge of the dissemination of information about the Judiciary. The department has eight sub-departments responsible for cultural activities, print and publication of a daily bulletin, the weekly Mizan Magazine, the monthly Qaza journal, a yearly report and a website, which includes scholarly articles and reflects the activities of the Judiciary, including the removal and appointment of judges. Recently the yearly report, Sal Nama Qaza, which includes statistics on cases against judges, capacity-building, and the fight against corruption, was also published by the department. Though comprehensive, these reports are not well advertised. The Supreme Court runs a website in the national languages and English, which

<sup>259</sup> Hash-e-Subh, “Guzareh nazarat as wazayat wa amalkard mahakem wa system Qazayee dar Afghanistan,” Hash-e-Subh, [http://8am.af/oldsite.php?option=com\\_content&view=article&id=20722:1390-05-03-16-38-37&catid=58:2008-10-31-09-35-33&Itemid=543](http://8am.af/oldsite.php?option=com_content&view=article&id=20722:1390-05-03-16-38-37&catid=58:2008-10-31-09-35-33&Itemid=543) (accessed 24 March 2015).

<sup>260</sup> MoJ, “Competencies of Courts”, 2005: Article 75.

<sup>261</sup> The Ministry of Justice, “Law on Supervision and Implementation of Anti-Corruption Strategies,” Official Gazette 957 (1387AH [2008]): Article 12.

<sup>262</sup> MoJ, “Constitution”, 2004: Article 128.

<sup>263</sup> MoJ, “Competencies of Courts”, 2005: Article 8.

<sup>264</sup> MoJ, “Competencies of Courts”, 2005: Article 76.



includes news, reports and materials for judges. In the library section of the website, there are only four reference books for the judges.

The Judiciary published its first comprehensive yearly report (Sal Nama Qaza) in 2014. In the same report, it provided a range of information, including the number of cases handled each year. According to Sal Nama Qaza, the Judiciary resolved a total of 425,044 cases from 2007 to 2013 of which 76,864 were dealt with by the Dewans of the Supreme Court, 136,930 handled by appeal courts, and 211,250 by primary and special courts.<sup>265</sup> Holding judicial proceedings in public is common practice in Afghanistan. IWA's trained community members participated in 958 court proceedings in the provinces of Balkh, Nangarhar, Bamayan, and Kapisa in 2014.<sup>266</sup>

Even though the Judiciary provides certain printed information to the public, the Supreme Court does not allow its members to talk to the media and the citizens without permission from the Chief Justice. It is very sensitive about critical reports and it expects that every independent report about the Judiciary's activities be verified before publication. In 2013, the Judiciary rejected a report on corruption, because the Judiciary considered it one-sided.<sup>267</sup>

**Score: 50**

### **3.2.3 Accountability (law) – To what extent are there provisions in place to ensure that the Judiciary has to report and be answerable for its actions?**

The courts are obligated to state the reason(s) for their verdicts.<sup>268</sup> The final decision is published in Mizan Magazine of the Supreme Court. If a judge does not mention the reason(s) for his/her verdict or there is a problem in the reasoning of the verdict, a party to the case may complain to the Audit Department.<sup>269</sup>

The Audit Department and the Care and Control Department of the Supreme Court are mandated to ensure internal accountability of the Judiciary. There is no external accountability mechanism, except Article 127 of the Constitution, which entitles Wolesi Jirga to dismiss member(s) of the Supreme Court according to the provisions of the law.<sup>270</sup>

The Care and Control Department is responsible for fighting corruption and auditing financial documents, and is authorised to investigate and arrest all suspects. In case the suspect of a criminal or corruption case is a judge, it requires the approval of the Supreme Court. The Care and Control Department can request the help of a prosecutor, police and coroner (*Teb Adli*).<sup>271</sup>

The Audit Department audits judicial and administrative affairs every year or upon request. The department investigates complaints submitted to them by a citizen or a party to a case, or an order issued to them by the Supreme Court or the Chief Justice or the Director of General Administration.

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<sup>265</sup> Zubal, 2014: 44–45.

<sup>266</sup> Mohammad Hashim, "Hemayat az mahakim omumi ba manaye tazmin shafafiyat bishtar adli wa Qazayi mibashad", Integrity Watch Afghanistan, Monthly Magazine, Issue No: 49, (1393AH [2014]).

<sup>267</sup> Saleha Sodat, "report shows judiciary is most corrupt institution in Afghanistan", Tolo News, [www.tolonews.com/en/afghanistan/11176-report-shows-judiciary-is-most-corrupt-institution-in-afghanistan-](http://www.tolonews.com/en/afghanistan/11176-report-shows-judiciary-is-most-corrupt-institution-in-afghanistan-) (accessed on 12 April 2015).

<sup>268</sup> MoJ, "Constitution", 2004: Article 129.

<sup>269</sup> Supreme Court, "Audit Department", Supreme Court, <http://supremecourt.gov.af/fa/page/634/639> (accessed 24 March 2015).

<sup>270</sup> MoJ, "Constitution", 2004: Article 127.

<sup>271</sup> Supreme Court, "Care and Control Department Regulation", Supreme Court (1386AH [2008]), Article 4, 8 and 10.

It also assesses breaches of conduct of administrative and judicial staff and forwards its report to the Supreme Court.<sup>272</sup>

**Score: 50**

**3.2.4 Accountability (practice) – To what extent do members of the Judiciary have to report and be answerable for their actions in practice?**

Judges are required to name the provisions of the law applied to a case and deliver his/her reason(s) while issuing the final verdict. However, it is difficult for the common person to understand the Arabic words and the technical and legal terms that are common in court language. In January 2012, the Supreme Court held a conference where the judges of the Supreme Court, the chiefs of the appeal courts and other high-ranking judges simplified old manuals of court language and procedures and published them after the conference.<sup>273</sup>

The Judiciary has two internal audit organisations: the Audit Department and the more powerful and controversial Care and Control Department, both of which are located in the Supreme Court. The Audit Department is located at the Supreme Court alone, while the Care and Control Department also has provincial departments. In 2013, the Audit Department deducted the salaries of two judges in Kandahar who “did not perform their duty.”<sup>274</sup> This happens throughout Afghanistan. According to a judge, this is routine in every province.<sup>275</sup>

In practice, the sole duty of the Care and Control Department is to prevent, investigate and repress corruption. The department has shown independence and has imposed sanctions against many judges. When people submit their complaints to the department, this research found that the Judiciary did not provide legal and/or physical protection. Based on the complaints received and on its own initiative, the Care and Control Department has arrested, tried and sent to jail 77 judges from 2007 to 2014.<sup>276</sup> However, disciplinary actions do not seem to have been effective, because, as stated by one observer, “Afghanistan after 2009 became the only country in the world about which one could say hundreds of judges have been punished or dismissed for corruption.”<sup>277</sup> These efforts do not seem to have increased access to justice or reduced corruption. Some critics call the Care and Control Department intrusive and against the principle of independence of judges,<sup>278</sup> while others describe it as ineffective and corrupt itself.<sup>279</sup>

**Score: 75**

**3.2.5 Integrity mechanism (law) – To what extent are there mechanisms in place to ensure the integrity of members of the Judiciary?**

The judges are obligated to register their assets with the HOOAC.<sup>280</sup> There are elaborate provisions to prevent a judge from being unduly influenced by extending integrity principles to his/her family. A

<sup>272</sup> Supreme Court, “Audit Department”, Supreme Court, <http://supremecourt.gov.af/fa/page/634/639> (accessed 24 March 2015).

<sup>273</sup> Zhubal, 2014: 108.

<sup>274</sup> Interview with a judge, name withheld on request, 28 March 2015.

<sup>275</sup> Interview with a judge, name withheld on request, 28 March 2015.

<sup>276</sup> Zhubal, 2014: 154.

<sup>277</sup> John Braithwaite and Ali Wardak, “Crime and War in Afghanistan, Part I: the Hobbesian Solution”, *British Journal of Criminology* 53 (2013): 12.

<sup>278</sup> Interview with Nasrullah Stanikzai, Kabul University, Kabul, 9 March 2015.

<sup>279</sup> Interview with Mohammad Omar Babrakzai, Retired Member of Supreme Court, Kabul, 8 March 2015.

<sup>280</sup> MoJ, “Competencies of Courts”, 2005: Article 75.

judge shall not accept gifts or allow his relatives to receive favours and gifts for what he has done or what he is going to do relating to the performance of judicial duties.<sup>281</sup>

In 2007, the Supreme Court passed a code of conduct, which includes issues pertaining to gifts and hospitality, conflicts of interest and business transactions. It recommends that a judge keeps her/himself updated on judicial knowledge and skills, and hears a case with patience. He/she shall not allow him/herself to be influenced by his/her superior judges or anyone in the government, and judge a case independently and according to the law. If there are circumstances in which these ethics cannot be applied, the judge shall disqualify him/herself from hearing and/or judging the case. The Supreme Court shall take disciplinary actions if this code of conduct is breached by judges.<sup>282</sup> Ordinary citizens can also report and complain about a breach of code of conduct. If a party to a case believes that a judge is not impartial or suspects him/her of accepting bribes, he/she can file a complaint against the judge at the Care and Control Department.<sup>283</sup>

Judges cannot engage in other jobs during their term of office,<sup>284</sup> but there are no legal limitations on conducting business upon the end of service. To avoid conflicts of interest, a judge shall not do business with the state or become a member of a political party during their term of office.<sup>285</sup> There are no legal impediments to receiving honoraria in connection with privately-sponsored trips, but the code of conduct insists that nothing shall be accepted if it influences one's decision.

**Score: 25**

### **3.2.6 Integrity mechanism (practice) – To what extent is the integrity of members of the Judiciary ensured in practice?**

The Care and Control Department of the Supreme Court is responsible for ensuring the integrity and adherence of judges to the code of conduct. The department has the power to arrest and take disciplinary action against judges and administrative staff. Since 2007, it has taken disciplinary action against 1052 judges and administrative staff.<sup>286</sup> But these sanctions do not seem to have changed people's perceptions of the Judiciary. In 2013, 60 per cent of Afghans thought that the Judiciary was the most corrupt institution in Afghanistan.<sup>287</sup>

The HOOAC claims to have registered the assets of 8000 officials, but it has published only the details of 66 high-ranking officials. There is no case in which the wealth of judges' has been scrutinised and they have been called upon to explain their wealth. There are also no cases of sanctions against those judges who have not registered their assets.

As noted above, judges are not allowed to do business during their term in office. However, judges have written defence statements for plaintiffs and have provided consultancy services to non-governmental organisations (NGOs) and law firms while in office. These practices continue with no

<sup>281</sup> Supreme Court, "Regulation of Judicial Conduct for Judges of Islamic Republic of Afghanistan", Supreme Court (1386AH [2007]): Article 21.

<sup>282</sup> Ibid, Article: 23.

<sup>283</sup> Supreme Court, "Care and Control Department Regulation," Supreme Court, <http://supremecourt.gov.af/fa/page/634/8132> (accessed 24 March 2015).

<sup>284</sup> MoJ, "Competencies of Courts", 2005: Article 152.

<sup>285</sup> MoJ, "Competencies of Courts", 2005: Article 153.

<sup>286</sup> Zubal, 2014: 154.

<sup>287</sup> Integrity Watch Afghanistan, "Corruption has become Afghanistan's second biggest problem", Integrity Watch Afghanistan, [www.iwaweb.org/ncs/](http://www.iwaweb.org/ncs/) (accessed on 21 April 2015). (See also Saleha Sodat, "Report shows judiciary is most corrupt institution in Afghanistan", Tolo News, [www.tolonews.com/en/afghanistan/11176-report-shows-judiciary-is-most-corrupt-institution-in-afghanistan-](http://www.tolonews.com/en/afghanistan/11176-report-shows-judiciary-is-most-corrupt-institution-in-afghanistan-) (accessed on 12 April 2015).

legal consequences, although they have become less common since an increase in the salary of judges.<sup>288</sup>

### 3.3 ROLE

Score: 0

#### 3.3.1 Executive oversight (law and practice) – To what extent does the Judiciary provide effective oversight of the Executive?

The Supreme Court does not have jurisdiction to review the actions or legislative decrees of the executive. However, the lower courts (appeal and primary courts) can request the Supreme Court to review the compatibility of laws, courts' oversight on actions and decisions of the Executive. Article 121 of the Constitution stipulates that "at the request of the Government, or courts, the Supreme Court shall review the laws, legislative decrees, international treaties, international covenants for their compliance with the Constitution and their interpretation in accordance with the law."<sup>289</sup> As stated above, the Supreme Court cannot initiate, review or interpret laws on its own. There is also no instance where a court has requested the Supreme Court to review the compliance of a presidential decree or a law passed by the National Assembly.

Score: 50

#### 3.3.2 Corruption prosecution (practice) – To what extent is the Judiciary committed to fighting corruption through prosecution and other activities?

Considering the pervasive corruption in the country, in 2010, the Supreme Court established primary and appeal courts to hear corruption cases. In *Sal Nama Qaza* (Yearly Report by the Judiciary), published in 2014, the Judiciary provided statistics on corruption cases brought before its courts for the past five years. In 2010, the primary and appeal courts throughout Afghanistan heard 1112 cases. This number increased to 1222 in 2014.<sup>290</sup>

Additionally, to monitor the strict implementation of courts' decisions by the police, the Supreme Court established the Department of Monitoring Implementation of Decisions of Courts in 2012. In spite of arrests, a new law increasing the salaries of judges to a much higher level, and the establishment of new departments, there have been no noticeable changes in reducing corruption, speeding up the delivery process of justice to the citizens and releasing prisoners from jail on time – there are people whose prison term is over, but they are still sitting in jail.<sup>291</sup>

There has been no case dealing with corruption-related crimes with a cross-border element, where a foreign judicial authority has requested the Afghan Supreme Court to offer mutual legal assistance.

### Recommendations

- An independent judicial service commission should be established to appoint, hire and train judges and judicial staff, handle complaints and conduct disciplinary procedures against judicial staff. The commission should be vested with the power to review any executive and legislative decree which impedes the independence of the Judiciary, and make periodic recommendations to the President to improve the

<sup>288</sup> Interview with a judge, name withheld on request, 28 March 2015.

<sup>289</sup> MoJ "Constitution", 2004: Article 121.

<sup>290</sup> Zubal, 2014: 158 and 170.

<sup>291</sup> Radio Azadi, "wazarat adliya Afghanistan: yagana mushkil afzayesh ruzafzoon zendanyan mibashad," Radio Azadi, <http://da.azadiradio.org/content/article/1741371.html>.

integrity of the sector based on the present challenges and any other relevant administrative reforms.

- Setaz Qazayee should provide professional training for judges in criminal law, civil law, financial law, national security and anti-corruption. Anti-corruption training should be introduced in particular for judges who deal with corruption cases.
- The Judiciary should strengthen CMSs in the courts by including measures for safe archiving, coordination between departments, and ease of access to information for those seeking the services of the Judiciary. The CMS should be made uniform throughout the country for which allocation of appropriate resources and capacity-building is necessary.
- Records of appointments, transfer and removals of judges, as well as verdicts, reviews, interpretations and clarifications of all courts and divans should be made public.

## 4. PUBLIC SECTOR

### Summary

Due to the extensive and complex nature of the public sector, this pillar focuses on the IARCSC as the main agency responsible for supporting public sector activities. It also draws on examples from the health, education, telecommunication and transportation sectors.

The IARCSC is responsible for administrative reforms and provides training and services to civil servants in all government agencies. Public sector agencies are required to follow the recruitment, promotion and retirement rules and regulations of the IARCSC. However, insufficient financial and human resources and widespread political interference by MPs and ministers, in particular with regards to the recruitment processes, are big obstacles to developing an effective public sector.

There are clear provisions in the Civil Servants Law and Afghanistan Civil Service Law on transparency, accountability and integrity of public sector agencies but they are not always well-practiced by the civil servants. Likewise, although the Law on Procurement contains important provisions on anti-corruption, they are not consistently practiced in an effective manner.

The IARCSC is not required to educate the public on anti-corruption. It also does not cooperate in areas of administrative reforms in the public sector with NGOs, associations, civil society organisations and private agencies, the aim of which is to fight corruption in Afghanistan.

### Structure and organisation

The public sector in Afghanistan is composed of government organisations providing various government services to the public at the central, provincial and district levels. Article 50 of the Constitution obligates the state to reform and create a sound administration system, and regulate the activities of civil service institutions.<sup>292</sup> The civil service is the backbone of the public sector. According to Article 3 of the Afghanistan Civil Service Law, civil service refers to the performance of all executive and administrative activities of the government. The civil service has three major activities: 1) manage, regulate and deliver government services; 2) design policies and provide professional advice to the government; and 3) design, prepare and implement laws, presidential decrees and relevant regulations.<sup>293</sup>

All the government services are managed and provided by civil servants. Civil servants, excluding the armed forces and judges, are government employees responsible for delivering public services. As required by the Bonn Accord of 2001, the IARCSC was established in June 2003. The IARCSC designs policies and provides direction and expertise to better manage civil service affairs in the public sector. Moreover, it is mandated to support the development of a healthy, effective and efficient public administration system in the public sector.

The IARCSC has a chairman and eight commissioners who are selected by the President for a three-year term in office.<sup>294</sup> The IARCSC has the authority to govern all affairs of civil servants in an efficient manner at the central, ministerial and provincial level. The IARCSC is required to appoint a director-general (Grade 1) and a director (Grade 2) in public sector organisations. Civil servants of

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<sup>292</sup> MoJ “Constitution”, 2004: Article 50.

<sup>293</sup> MoJ, “Civil Service Law”, 2005: Article 3.

<sup>294</sup> MoJ, “Civil Service Law”, 2005: Article 5 (3).

grades 3–8 are appointed by individual public sector agencies and the IARCSC has an oversight role.

The IARCSC is composed of the Civil Services Administration, the Civil Services Appointment Board and the Civil Services Appeals Board.<sup>295</sup> The head of the IARCSC appoints commissioners for each board based on their academic background and professional experience. The Civil Services Administration has a General Directorate of Administrative Reform Secretary. The Appointment Board has five members and the Appeals Board has three members.<sup>296</sup> The IARCSC has five General Directorates and 27 provincial offices out of 34 provinces.

## Assessment

### 4.1 CAPACITY

**Score: 25**

#### 4.1.1 Resources (practice) – To what extent does the public sector have adequate resources to effectively carry out its duties?

The amount of human, financial, and physical resources available to public sector organisations varies. It has depended upon the yearly amount of aid the international community has provided, the annual budget plan of individual institutions and the availability of funds from the Afghan national treasury. The public sector agency budget is awarded by the Ministry of Finance on a yearly basis. The budget is disbursed to every public sector agency on a monthly basis. The breakdown for the current year 2015/2016 (1394 AH) is as follows: governing structure, rule of law and human rights, AFN 16.323 billion (US\$272 million); infrastructure and natural resources, AFN 69.854 billion (US\$1.164 billion); education, AFN 56.235 billion (US\$937.246 million); health, AFN 18.5 billion (US\$308.356 million); agriculture and rural development, AFN 41.544 billion (US\$692.240 million); social protection, AFN 21.077 billion (US\$351.296 million); economy and private sector, AFN 11.239 billion (US\$187.331 million).<sup>297</sup> According to the 1394 National Budget, most public sector organisations' budgets have increased compared with the 1393 fiscal year.

Overall, the public sector organisations' financial resources have significantly increased since the engagement of the international community in 2001. Almost all of the public sector organisations receive partial funding from the international community. From 2002 to 2011, the international community's total aid to Afghanistan was US\$70 billion, including security and development.<sup>298</sup> The international community covers the expenses of different projects and programmes delivering public services. Between 2002 and 2010, 49 per cent of the total aid was disbursed in the development sector, but due to a high level of security expenses in 2011, this percentage was decreased to 32 per cent.<sup>299</sup>

The IARCSC budget in 1392 was AFN 818.622 million (US\$1.436 million), which decreased to AFN 706.231 million (US\$12.390 million) in 1393.<sup>300</sup> In 1394, the IARCSC budget was increased to AFN 721.108 million (US\$12.651 million)<sup>301</sup> showing a 2 per cent increase compared with the budget of 1393. According to the Director-General of Civil Services Management, the financial resources allocated by the Ministry of Finance are inadequate in fulfilling the IARCSC's essential requirements

<sup>295</sup> MoJ, "Civil Service Law", 2005: Article 6.

<sup>296</sup> MoJ, "Civil Service Law", 2005: Article 5 (6).

<sup>297</sup> MoF, "1394 National Budget", 2014: 58–59.

<sup>298</sup> Ministry of Finance, "Development Cooperation Report", National Budget Directorate (2012): 1.

<sup>299</sup> MoF, "Cooperation Report", 2012: 14.

<sup>300</sup> MoF, "1393 National Budget", 2013: 39.

<sup>301</sup> MoF, "1394 National Budget", 2014: 58.



to perform its duties effectively.<sup>302</sup> The General Directorate of Administrative Reform Secretariat stated that insufficient budget causes a human and physical resource shortage at the central and provincial levels. The same source pointed out that the Appointment Board should have 54 staff, but only has 24.<sup>303</sup> This demonstrates that the IARCSC cannot effectively carry out its oversight role in appointing civil servants across the public sector.

The pay scales for civil servants are designed according to their grades. The lowest monthly salary for a civil servant is AFN 5000 (US\$87) and the highest salary is AFN 32,500 (US\$570)<sup>304</sup> across the public sector. Civil servants' salaries are very low and inadequate to maintain a decent standard of living. In a survey conducted by the United Nations Office on Drugs and Crime (UNODC) in 2013, public officials were asked about their salary scale and the prevailing economic circumstances of Afghanistan. The majority of public officials responded that "they are not satisfied with their salary".<sup>305</sup>

According to the Deputy of Minister of Administration and Finance in the Ministry of Justice, the salary imbalance is the main reason for deterring talented people from working in the public sector. He stated that the monthly salary of a director in the public sector is around AFN 22,000 (US\$385), while in the private sector, a director receives about five times more than that, i.e., AFN 114,000 (US\$2000).<sup>306</sup> Therefore, most skilled and experienced people prefer working in the private sector to have a decent standard of living. Since the IARCSC cannot attract talented people to the public sector, it cannot provide civil servants with training and capacity-building.

**Score: 50**

#### **4.1.2 Independence (law) – To what extent is the independence of the public sector safeguarded by law?**

The legal framework contains several provisions to ensure the independence of civil servants in the public sector but some important safeguards are not covered. Civil servants are required to be appointed to government agencies through fair and open competition, without any gender, ethnic, religious and disability discrimination.<sup>307</sup> Promotion is an important factor to motivate public sector employees to work effectively and it includes career advancement, which is associated with a salary increase. Civil servants shall be promoted from one grade/step to another based on an annual performance appraisal report.<sup>308</sup>

The Civil Servants Law and the Afghanistan Civil Service Law do not include any explicit provisions and regulations to prohibit undue political/partisan interference in the appointment and promotion of civil servants, but professional impartiality is a significant principle in the civil service and administration reforms. Article 25 (2) highlights that public sector employees shall be impartial, honest and loyal, and follow the administrative chain of command within their organisations.<sup>309</sup>

There is no specific institution tasked to protect civil servants against arbitrary dismissals or political interference. However, the Appeals Board of the IARCSC is tasked with reviewing complaints from

<sup>302</sup> Interview with Ahmad Masoud Tokhi, Director General Civil Service Management Department, IARCSC, Kabul, 1 June 2015.

<sup>303</sup> Interview with Sayed Zabihullah Sawayz, General Director of Administrative Reform Secretariat, IARCSC, Kabul, 31 May 2015.

<sup>304</sup> Ministry of Justice, "Civil Servants' Law", Official Gazette 951 (1387AH [2008]): 58.

<sup>305</sup> United Nation Office on Drugs and Crime [UNODC], "Corruption in Afghanistan: Recent patterns and integrity challenges in the public sector", UNODC (2013): 8.

<sup>306</sup> Interview with Sayed Mohammad Hashimi.

<sup>307</sup> MoJ, "Civil Servants' Law", 2008: Article 10 (2).

<sup>308</sup> MoJ, "Civil Servants' Law", 2008: Article 23 (3).

<sup>309</sup> MoJ, "Civil Service Law", 2005: Article 25 (2).

public sector employees against unfair/unlawful treatment within any public sector agency.<sup>310</sup> In case of any forms of discrimination by their supervisors or colleagues, civil servants have the right to appeal directly to the Appeals Board.

The Civil Servants Law highlights legitimate reasons for dismissal of civil servants. According to Article 13, among other reasons, a civil servant can be dismissed, if he/she is convicted of a crime, lacks the required skills or violates the rules and regulations of the organisation.<sup>311</sup> This indeed limits the scope of arbitrary decisions.

The Afghanistan Civil Services Law, Civil Servants Law and the Public Procurement Law do not have any provisions about parliamentary lobbying for the inclusion and exclusion of publicly procured projects in plans, programmes and budgets of the public sector.

**Score: 0**

#### **4.1.3 Independence (practice) – To what extent is the public sector free from external interference in its activities?**

In practice the public sector is not free from political interference in the recruitment and promotion of civil servants. The majority of the interference is from MPs and ministers. The reassignment and removal of senior civil servants in the public sector is common practice in Afghanistan after a change in government. It mostly happens based on political considerations. For example, since the establishment of the National Unity Government in September 2014, in the first month of his office, President Ghani terminated 25 senior civil servant contracts from the Office of Administrative Affairs and Council of Ministers Secretariats (OAACMS) alone.<sup>312</sup>

The Independent Joint Anti-Corruption Monitoring and Evaluation Committee (MEC), which was jointly established in 2010 by the Afghan government and the international community to monitor and evaluate activities conducted against corruption in public and private sector agencies engaged in business with the government, has criticised the IARCSC for not preventing political interference in civil servants' recruitment processes.<sup>313</sup> The IARCSC was established to appoint talented and qualified people, but much hiring by the IARCSC in the public sector is done through political connections and support. The majority of interference during the recruitment process comes from MPs and some ministers.<sup>314</sup> According to UNODC, the majority of civil servants in different positions at different public sector institutions admit irregularities in appointment procedures by the IARCSC at the central and provincial levels.<sup>315</sup> A provincial council member in Faryab and an advisor to the Faryab governor pointed out that the IARCSC does not consider merit and qualification for the announced positions during the shortlisting and interview process.<sup>316</sup> This is supported by a 2013 MEC report, which noted that although the IARCSC is supposed to recruit new district governors based on qualifications, merit and open competition, most of the former district governors were reselected for their old or similar positions.<sup>317</sup> A recent report published by the IARCSC shows that within the first six months in 2013, the Appeals Board received 376 complaints from civil servants

<sup>310</sup> MoJ, "Civil Service Law", 2005: Article 18 (8).

<sup>311</sup> MoJ, "Civil Servants' Law", 2008: Article 13.

<sup>312</sup> Jomhor News, "Critics of Wolesi Jirga on President Ghani for termination of Civil Servants", Jomhor News, <http://jomhornews.com/doc/news/fa/57321/> (accessed on 26 May 2015).

<sup>313</sup> Independent Joint Anti-Corruption Monitoring and Evaluation Committee [MEC], "Fifth Six-Month Report, July 1, 2013-December 31, 2013", MEC, (2014): 50.

<sup>314</sup> Interview with Sayed Zabihullah Sawayz.

<sup>315</sup> UNODC, 2013: 40.

<sup>316</sup> Institute for War and Peace Reporting, "Corruption Claimed in Afghan Civil Service Appointments," IWPR, <https://iwpr.net/global-voices/corruption-claimed-afghan-civil-service-appointments> (accessed on 29 May 2015).

<sup>317</sup> Independent Joint Anti-Corruption Monitoring and Evaluation Committee, "Fifth Six-Month Report, July 1, 2013-December 31, 2013", Independent Joint Anti-Corruption Monitoring and Evaluation Committee (2014): 121.

about recruitment misconduct across the public sector agencies.<sup>318</sup> The large number of complaints suggests that the heads of individual public sector agencies do indeed arbitrarily appoint civil servants.

According to a former senior IARCSC advisor, in principle, public sector employees are not allowed to use their authority for partisan reasons. However, in practice, senior civil servants, including some IARCSC commissioners, are involved in partisan activities to secure and maintain their positions.<sup>319</sup> For example, the MEC pointed out that there are some commissioners at the IARCSC who are working longer than their actual contract period allows.<sup>320</sup> This shows the lack of transparency and interference in the recruitment process of the civil servants in the public sector. The commissioners of the Independent Election Commission (IEC) were also allegedly selected based on political networks rather than merit,<sup>321</sup> which affected the 2014 election process (see IEC pillar).

## 4.2 GOVERNANCE

Score: 50

### 4.2.1 Transparency (law) – To what extent are there provisions in place to ensure transparency in the financial, human resource and information management of the public sector?

The legal framework for the public sector has sufficient provisions to ensure transparency in financial and human resources, but it lacks provisions about the information management of public sector agencies.

In Afghanistan, all civil servants are obligated to register their assets. The Regulation on the Code of Conduct of Civil Servants signed into law in September 2006 states that a civil servant is obligated to, “inform [the institution he/she works in] of his/her income, assets, and debts while joining the government.”<sup>322</sup> This law does not discuss the details of registration or if the government institutions are required to verify or publish the registered assets. The 2008 LSIACS obligates grade 1 and grade 2 civil servants and all the civil servants who work for financial, accounting and procurement to register their assets with the HOOAC.<sup>323</sup> (Refer to the Anti-Corruption Agencies Pillar for further details.)

To enhance transparency and accountability in the public sector, President Ghani signed the Access to Information Law in October 2014. According to the provisions of this law, government agencies shall provide information regarding their respective activities to the public.<sup>324</sup> Citizens who seek information must submit a written request form to the relevant public agency. The agency is required to provide the information within approximately 10 working days after receiving the request. The

<sup>318</sup> IARCSC, “Analytical performance report of second quarter report of 1393,” IARCSC, <http://iarcsc.gov.af/%DA%AF%D8%B2%D8%A7%D8%B1%D8%B4-%D8%AA%D8%AD%D9%84%DB%8C%D9%84%DB%8C-%D8%A7%D8%AC%D8%B1%D8%A7%D8%A7%D8%AA-%D8%B1%D8%A8%D8%B9-%D8%AF%D9%88%D9%85-%D8%B3%D8%A7%D9%84-%D9%85%D8%A7%D9%84%DB%8C1393-%DA%A9/> (accessed on 27 May 2015).

<sup>319</sup> Interview with Frydoon Shirzai, a former senior advisor to IARCSC, Kabul, 1 June 2015.

<sup>320</sup> MEC, “VCA Report on the Appointment Process in the Independent Administrative Reform and Civil Service Commission”, MEC (2013).

<sup>321</sup> Gran Hewad, Martine van Biljert and Thomas Ruttig, “A Hasty Process: New Independent Election Commission announced,” Afghanistan Analyst Network, [www.afghanistan-analysts.org/a-process-fast-and-patchy-new-independent-elections-commission-announced/](http://www.afghanistan-analysts.org/a-process-fast-and-patchy-new-independent-elections-commission-announced/) (accessed on 29 May 2015).

<sup>322</sup> Ministry of Justice, “The Regulation on the Code of Conduct of Civil Servants,” Official Gazette 900 (1385 AH [2006]): Article 7(4).

<sup>323</sup> MoJ, “Anti-Corruption Strategies”, 2008: Article 12 (2).

<sup>324</sup> Ministry of Justice, “Law on Access to Information,” Official Gazette 1156 (1393AH [2014]): Article 4 (2).

response can be extended for another three days, if the organisation provides justifiable reasons.<sup>325</sup> However, according to the Global Right for Information Rating, the Access to Information Law is scored 7 out of 30 in terms of requesting procedures.<sup>326</sup> The Access to Information Law also requires the public sector organisations to disseminate information via their websites and the media for the public consumption.<sup>327</sup> The kinds of information to be published on the website are not specified in the Access to Information Law, indicating weakness in the law. While overall, the Access to Information Law is a positive step to enhance transparency and accountability in the country, there are still some terms which are not explicitly defined such as “national interest” and “national security”, leaving room for discretion.

The rules governing appointments in the public sector are generally adequately transparent. Ministries and government agencies provide information to the IARCSC about their vacancies. In order to attract suitable candidates, the IARCSC announces vacant positions, analyses job applications and invites qualified candidates for interviews.<sup>328</sup>

The procurement law contains provisions about transparency in procurement. The Ministry of Finance and other procurement entities shall develop a database to facilitate the identification of eligible bidders<sup>329</sup> and record all procurement contracts for transparency purposes. The procurement contracts are recorded with the Contract Management Office of Ministry of Finance.<sup>330</sup> The procurement entities, which hold the records of bidders, shall publish them through a database for public information. The record of procurement proceedings shall contain bidding prices, summary of evaluation of bids, bidders lists and their qualifications, reasons for choosing a procurement method, reasons for requesting consultancy services, and request for clarification or any other responses.<sup>331</sup>

**Score: 25**

#### **4.2.2 Transparency (practice) – To what extent are the provisions on transparency in financial, human resource and information management in the public sector effectively implemented?**

Compared with the provisions on procurement, the provisions on transparency in the appointment and assets registration process are not effectively implemented in the public sector. All public sector agencies have a website to publish information about their activities and challenges, and most of the public sector organisations’ (Ministry of Public Health, Education, and Ministry of Telecommunication and Information) websites are up to date and have comprehensive information about their activities. A few of the public sector organisations’ (Ministry of Public Work, Ministry of Transport and Civil Aviation) websites are not up to date and do not contain comprehensive information. Citizens can request information which is not available on the website. However, no survey has been conducted yet to show whether the citizens have reasonable access to information about public sector activities.

The IARCSC regularly advertises vacant positions (grade 1 and 2) in the public sector agencies on its website to ensure fair and open competition. However, there are claims that the announcement of senior positions by the IARCSC is just for the sake of formality (see independence practice). Public officials’ assets and income registration, verification, and declaration are conducted by the HOOAC (see transparency law section). The HOOAC claims that since its establishment in 2008, around

<sup>325</sup> MoJ, “Access to Information”, 2014: Article 6 (1).

<sup>326</sup> Global Right to Information Rating, “Afghanistan,” Global Right to Information Rating, [www.rti-rating.org/view\\_country?country\\_name=Afghanistan#right](http://www.rti-rating.org/view_country?country_name=Afghanistan#right) (accessed on 27 May 2015).

<sup>327</sup> Ibid, Article 11(7).

<sup>328</sup> MoJ, “Civil Service Law”, 2005: Article 15 (1).

<sup>329</sup> Ministry of Justice, “Procurement Law”, Official Gazette 957 (1387AH [2008]): Article 19 (1).

<sup>330</sup> MoJ, “Procurement Law”, 2008: Article 65.

<sup>331</sup> MoJ, “Procurement Law”, 2008: Article 66 (1).

8000 public sector employees have registered their assets.<sup>332</sup> However, the assets and income of public sector employees (grade 1 and 2) have not yet been published by the HOOAC. A senior official of the HOOAC stated that due to insecurity, the assets of public sector employees are not disclosed.<sup>333</sup>

Transparency in public procurement was limited in the past, but since the establishment of the National Unity Government, visible progress has been made. Bidding opportunities, tenders and the list of registered and awarded contracts are published comprehensively and in timely manner by the National Procurement Authority (NPA). Procurement opportunities are also published in a newspaper of wide circulation. Moreover, the list of debarred companies and companies which are under the debarment process is published on the NPA website.

**Score: 50**

#### **4.2.3 Accountability (law) – To what extent are there provisions in place to ensure that public sector employees have to report and be answerable for their actions?**

The legal framework ensures that public sector employees report and be answerable for their actions. There is no specific whistleblowing law or policy in the public service agencies, except the provisions contained in LSIACS. The procurement law also does not include any provisions on whistleblowing about misconduct and management of complaints in the public procurement procedures.

According to Article 5 (3) of the Code of Conduct of Civil Servants, when a civil servant becomes aware of an illegal action of another civil servant, he/she must report the issue to the relevant director.<sup>334</sup> Government organisations are not allowed to disclose the identity of the whistleblower. According to LSIACS, the informants/whistleblowers are immune from any type of pressure and intimidation, and the disclosure of their identity is prohibited.<sup>335</sup>

In case of any administrative corruption, discrimination or nepotism, the IARCSC has an Appeals Board. The board is responsible for receiving and dealing with the complaints made by the civil servants and applicants for civil service employment (see independence section). To prove a case, the Appeals Board demands proof from the complainants or relevant organisations, without which the case will not proceed. After a complaint is evaluated, the Appeals Board decision is recorded and the relevant government agency is informed. If one of the parties disagrees with the decision of the IARCSC Appeals Board, the case is submitted to the court of law.<sup>336</sup> There are no provisions in the Civil Servants Law and the Afghanistan Civil Service Law regarding citizens' complaints with the IARCSC. Complaints with the HOOAC are registered through complaint boxes in each public sector agency, including direct petition to the HOOAC, online complaint forms, emails, and mobile contact.

Civil servants are mandated to refrain from committing any forms of administrative corruption. The Law on Penal Code includes three chapters about misbehaviour/crime of public officials during their term of service within the public sector. The punishments include imprisonment and cash fines.<sup>337</sup> The imprisonment duration and the amount of the cash fines vary depending on the crime committed.

<sup>332</sup> Rafiq Sediqi, "Officials Fail to Register Assets for Anti-Corruption Effort", Tolo news, [www.tolonews.com/en/afghanistan/14945-officials-fail-to-register-assets-for-anti-corruption-effort](http://www.tolonews.com/en/afghanistan/14945-officials-fail-to-register-assets-for-anti-corruption-effort) (accessed on 28 May 2015).

<sup>333</sup> Interview with a senior staff of HOOAC, name withheld on request, 18 May 2015.

<sup>334</sup> Ministry of Justice, "Code of Conduct for Civil Servants", Official Gazette 900 (1385AH [2006]): Article 5 (3).

<sup>335</sup> MoJ, "Anti-Corruption Strategies", 2008: Article 14 (2).

<sup>336</sup> MoJ, "Civil Services Law", 2005: Article 19 (1, 7 and 8).

<sup>337</sup> Ministry of Justice, "Law on Penal Code", Official Gazette 347 (1355AH [1976/1977]): Book Two (Chapter 5 and 7).

As far as the auditing of the public sector is concerned, it is conducted by the SAO. The auditing is done with the collaboration of the internal audit unit of each public agency (see SAO chapter). The final audit report of Qatia is submitted by SAO to the President and the National Assembly on an annual basis.<sup>338</sup> Legally, the public sector agencies are not required to report to the legislature (Mashrano Jirga and Wolesi Jirga), or any other government agencies.

**Score: 25**

#### **4.2.4 Accountability (practice) – To what extent do public sector employees have to report and be answerable for their actions in practice?**

The provisions for accountability are not effectively practiced by the public sector employees. Civil servants are answerable for their actions to their immediate supervisor, but long administrative procedures, lack of meritocratic appointments, weak management systems and a lack of follow-up of complaints in the public sector have broken the chain of command.

In 2013, the MPs asked the government to initiate reforms in the recruitment process of the civil servants in the public sector agencies and suggested dissolving the IARCSC. The MPs claimed that government positions are sold by the IARCSC and the cost of the position of director and district governor is between US\$20,000 and 70,000.<sup>339</sup>

There are no official statistics made available by the AGO about offences committed by the public sector employees. Public agencies, including the IARCSC, the HOOAC and the SAO submit cases of public sector employees charged with breaking the law to the AGO for prosecution, but the AGO has failed to investigate and prosecute the majority of these cases.<sup>340</sup> Most recently, President Ghani suspended six senior officials from the Ministry of Urban Development on corruption charges and the cases were handed over to the AGO for prosecution.<sup>341</sup> However, not enough cases of public sector officers charged with corruption have been exposed and reported by any of the public sector agencies.

In 2014 President Ghani replaced the Procurement Policy Unit with the NPA. According to its policy director, the NPA is responsible for controlling activities related to public procurement. The same source pointed out that the NPA provides effective oversight to avoid corruption in procurement proceedings.<sup>342</sup> Through its “zero tolerance for corruption” policy, the NPA barred companies involved in corruption or providing false information (see details in Accountability Law indicator at 9.2.3). Furthermore, since the establishment of the NPA, the government has saved millions of dollars from procurement in the public sector organisations, particularly from the contracts of the Ministry of Defence (see indicator on Safeguarding Integrity in Public Procurement).

**Score: 75**

#### **4.2.5 Integrity mechanisms (law) – To what extent are there provisions in place to ensure the integrity of public sector employees?**

<sup>338</sup> Ministry of Justice, “Audit High Administration Law”, Official Gazette 1101 (1392AH [2013]): Article 12.

<sup>339</sup> BBC News, “Controversy over the dissolution of the Civil Service Commission of Afghanistan”, BBC Farsi News, [www.bbc.co.uk/persian/afghanistan/2013/04/130414\\_k04\\_reform\\_commission](http://www.bbc.co.uk/persian/afghanistan/2013/04/130414_k04_reform_commission) (accessed on 30 May 2015).

<sup>340</sup> Yama Torabi, “The Growing Challenge of Corruption in Afghanistan”, Asia Foundation (2012): 12.

<sup>341</sup> Abed Joyenda, “Ghani suspends six officials from Ministry of Urban Development on corruption charges”, Tolo News, [www.tolonews.com/en/afghanistan/19755-ghani-suspends-six-officials-from-ministry-of-urban-development-on-corruption-charges](http://www.tolonews.com/en/afghanistan/19755-ghani-suspends-six-officials-from-ministry-of-urban-development-on-corruption-charges) (accessed on 30 May 2015).

<sup>342</sup> Interview with Murtaza Noori, Director of Policy, National Procurement Authority, Presidential Office, Kabul, 1 June 2015.



The Civil Servants Code of Conduct contains enough provisions to ensure the integrity of public sector employees. The Civil Servants Code of Conduct was developed for all civil servants working in the public sector by the IARCSC in 2006. Civil servants are not allowed to receive or give any gift, material or immaterial interests to/from their line managers, relatives and anyone else in relation to their job.<sup>343</sup> Moreover, they are prohibited from unauthorised use of official equipment and properties/facilities for personal purposes. The civil servants shall perform their duty in an impartial and honest manner. They should not get involved in activities, which undermine the integrity of their respected organisation.

According to Article 26 of the Afghanistan Civil Services Law, civil servants are prohibited from having any other employment during office hours.<sup>344</sup> Furthermore, civil servants are not allowed to provide any secret information of the relevant organisation to anyone, unless directed to do so.<sup>345</sup> An employee also cannot provide information to the public, which is against the policy of the respective organisation or damages the image of the respective organisation in the eye and mind of public. To avoid conflicts of interest, civil servants cannot be hired in any public sector institutions where the direct supervisor is a close relative (e.g., father, mother, son, daughter, brother, sister, husband or wife).<sup>346</sup> The code of conduct does not include any rules and regulations about the post-employment of public sector officials. After the end of their official employment, civil servants are allowed to do any work of their choice, but they should not use their official position for personal benefits.

Bribery of or by civil servants is a criminal offence under the Law on Penal Code of Afghanistan. If a public official requests or receives something in his/her own or someone else's name in return for performing his/her duty, he/she shall be sentenced to imprisonment (no less than one year and no more than five years), and a cash fine equivalent to what had been requested, promised or presented.<sup>347</sup>

The Law on Procurement contains provisions on anti-corruption. For example, a company can be debarred from the bidding process for a minimum period of one year and a maximum of five years. The criteria for debarment is if a company provides false documents in its bid, has a previous record of violation in procurement contracts, is involved in corruption and criminal cases related to business or is convicted for violation of procurement contracts/subcontracts.<sup>348</sup> It is to be noted that the debarred bidder can continue the performance of any contracts already awarded.

## **Score: 25**

### **4.2.6 Integrity mechanisms (practice) – To what extent is the integrity of public sector employees ensured in practice?**

Due to weak administration and training opportunities on integrity, the code of conduct is not applied effectively in practice by the civil servants. According to a 2012 UNODC survey on corruption in the public sector, half of Afghan citizens paid a bribe while requesting a public service. The total cost of bribes paid to public officials amounted to US\$3.9 billion. This shows a 40 per cent increase in real terms between 2009 and 2012.<sup>349</sup> The amount of bribes taken by public sector employees demonstrates that the existing code of conduct is not effective in ensuring ethical behaviour by public sector employees.

<sup>343</sup> MoJ, "Code of Conduct", 2006: Article 6 (2).

<sup>344</sup> MoJ, "Civil Services Law", 2005: Article 26.

<sup>345</sup> MoJ, "Code of Conduct", 2006: Article 7 (2).

<sup>346</sup> MoJ, "Civil Servants' Law", 2008: Article 7 (5).

<sup>347</sup> MoJ, "Penal Code", 1976/1977: Article 258.

<sup>348</sup> MoJ, "Procurement Law", 2008: Article 70 (1–2).

<sup>349</sup> UNODC, 2013: 5.



Corruption exists in all sectors, but it is particularly rampant in the police, justice sector, procurement, education and the IARCSC. In a survey conducted in 2014 by IWA, the education sector was the third most corrupt sector after the police and justice sectors.<sup>350</sup>

The code of conduct is often violated and it is ineffective in making civil servants' behave ethically. According to a former senior advisor to the IARCSC, accepting minor gifts and hospitality within the public sector is a common practice.<sup>351</sup> Acquiring personal gains and benefits are the main causes of violation of the code of conduct. This is supported by the UNODC survey, which indicates that around 70 per cent of public sector employees receive minor gifts from the general public in exchange for providing timely services.<sup>352</sup> To make the code of conduct known and increase integrity, the Afghan Civil Services Institute holds regular training sessions on integrity, anti-corruption, conflict resolution and gender issues for civil servants.<sup>353</sup> However, the increase in administrative corruption shows that the training provided by the Afghan Civil Services Institute of the IARCSC is not effective.

On its website, the NPA posts the list of companies which are blacklisted from procurement proceedings. Since its establishment in October 2014, the NPA has barred 56 companies, mostly construction, from procurement proceedings, arguing that the provided bank statements and other documents for bidding were falsified.<sup>354</sup> This suggests that the anti-corruption provisions in public procurement are generally imposed.

#### **4.3 ROLE**

**Score: 0**

##### **4.3.1 Public education (practice) – To what extent does the public sector inform and educate the public on its role in fighting corruption?**

There are no specific programmes run by the public sector to educate the public on corruption. No public sector agency except the HOOAC provides workshops and seminars on anti-corruption. The IARCSC is not mandated to inform the public on anti-corruption issues.

**Score: 0**

##### **4.3.2 Cooperation with public institutions, Civil Society Organisations (CSOs) and private agencies in preventing/addressing corruption (practice) – To what extent does the public sector work with public watchdog agencies, businesses and civil society on anti-corruption initiatives?**

There has been limited cooperation on anti-corruption initiatives between the public sector and watchdog agencies, businesses and CSOs. The HOOAC, as the main anti-corruption entity, does not have much cooperation with the above-mentioned institutions (see anti-corruption agencies chapter).

According to the Director-General of the Civil Service Management Department, the 2011–2017 IARCSC Strategic Plan requires the external relations department to establish cooperation with watchdog agencies and women and labour associations to expand reforms and service delivery in

<sup>350</sup> Integrity Watch Afghanistan, "National Corruption Survey 2014", Integrity Watch Afghanistan (2014): 4.

<sup>351</sup> Interview with Frydoon Shirzai.

<sup>352</sup> UNODC, 2013: 26.

<sup>353</sup> United Nations Development Program, "National Institution Building Project," UNDP (2012/2013): 15.

<sup>354</sup> President's Office, "List of Debarred Companies", National Procurement Authority, [www.ppu.gov.af/Beta/English/More/LDS.aspx](http://www.ppu.gov.af/Beta/English/More/LDS.aspx) (accessed on 6 June 2015).

the public sector.<sup>355</sup> However, the IARCSC, as an administrative reforms institute and provider of support services to civil servants, does not cooperate with watchdog or private agencies.

**Score: 75**

**4.3.3 Reduce corruption risks by safeguarding integrity in public procurement – To what extent is there an effective framework in place to safeguard integrity in public procurement procedures, including meaningful sanctions for improper conduct by both suppliers and public officials, and review and complaint mechanisms?**

The legal framework contains effective provisions to safeguard integrity in public procurement procedures to reduce the risk of corruption. With the coming of the National Unity Government in September 2014, President Ghani dissolved the Procurement Policy Unit managed by the Ministry of Finance and under his own supervision established the NPA in October 2014. This central procurement agency is responsible for overseeing procurement activities in the public sector. According to the government press release, since its establishment, the NPA has saved the government around AFN 5 billion (US\$87.719 million) through the oversight of contracts.<sup>356</sup>

However, according to the policy director of the NPA, limited finances are limiting the required technical and physical resources.<sup>357</sup> If the issue of financial scarcity is not solved, the NPA will be unable to attract talented human resources from the competitive private sector.

The NPA is mandated to bring fairness, transparency, accountability, effectiveness and efficiency in the public procurement system of the country. To tackle corruption in the procurement system, the NPA has adopted the principle of “zero tolerance for corruption”. Any government/procurement personnel or private sector companies involved in procurement corruption will not only be barred, but without exception, they will also be referred to the legal authorities.<sup>358</sup> Since October 2014, over 50 companies have been barred (see integrity practice), but still, the data about a legal decision on the debarred companies has not been made available to the public.

According to Article 33 of the Public Procurement Law, all submitted bids must be opened in the presence of the bidders or their legal representatives. The bids must be submitted by the bidder to the procurement unit in a sealed envelope before the closing date of the bid. The law allows procurement entities to extend the time of validity of a bid with the agreement of the bidder.<sup>359</sup>

The procurement law contains rules to ensure objectivity in the contractor selection process. The Evaluation of Bids Committee (EBC) is required to prepare an evaluation report including the advantages, disadvantages and comparison of all bids. Once the report is prepared, the EBC announces the successful bidder based on the criteria for bidding and the submitted documents.<sup>360</sup> After evaluation by the EBC, the report is sent to the Procurement Committee of the respected ministry for a decision of contract award.

According to the MEC, the contract award and contract oversight functions in the procurement processes of ministries are not separated between those responsible for deciding a contract award

<sup>355</sup> Interview with Ahmad Masoud Tokhi.

<sup>356</sup> Second Vice-President of the Islamic Republic of Afghanistan, “Press Conference of Public Procurement Directorate,” Second Vice President of the Islamic Republic of Afghanistan, [www.vpo.gov.af/fa/didgah/item/861-2015-05-31-09-13-45](http://www.vpo.gov.af/fa/didgah/item/861-2015-05-31-09-13-45) (accessed on 2<sup>nd</sup> June 2015).

<sup>357</sup> Interview with Murtaza Noori, Procurement Policy Director, National Procurement Authority, Presidential Office, Kabul, 1 June 2015.

<sup>358</sup> National Procurement Authority, “Introduction of the National Procurement Authority (NPA)”, NPA, [www.ppu.gov.af/Beta/English/AboutUs.aspx](http://www.ppu.gov.af/Beta/English/AboutUs.aspx) (accessed on 2 June 2015).

<sup>359</sup> MoJ, “Procurement Law”, 2008: Article 33 (2).

<sup>360</sup> MoJ, “Procurement Law”, 2008: Article 34 (1).

and those responsible for overseeing new contracts. A separation of contract award and contract oversight will avoid corruption in the procurement activities of the public sector organisations.<sup>361</sup>

One of the important tasks of the EBC is to avoid conflicts of interest and provide necessary information to enable bidders to participate in the bidding process. If the EBC finds that a bidder has a conflict of interest in the procurement contract process then it will be withdrawn before reaching the final process. In case of a bidder's failure to conclude a contract, the contract shall be awarded to another qualified bidder, which is next in the ranking of evaluation.

Procurement agencies are required to provide bidding documents for the bidders. According to the procurement law the bidders are required to submit the standard bidding documents described in the Article 30 of the law.

All interested and qualified bidders can submit their procurement proposals to the relevant procurement entity. The required documents shall be submitted to the procurement department between seven and 90 days after the bidding announcement.<sup>362</sup> Legally, the NPA is responsible for controlling and assessing all activities related to public procurement. As the functions of the NPA are regulated by the President, it is accountable to the President. Legally, the NPA can offer professional education and training opportunities for its staff in the field of procurement.<sup>363</sup> This has been practiced to some extent by the NPA, but our study shows that the training sessions are still inadequate, because a majority of the procurement staff do not have a specialisation in procurement.

In case of violation of the law and the subsequent damage, a bidder can submit an appeal to the Administrative Review Committee. The committee is composed of experts and the review process takes 10 days. The review committee submits the result to the relevant procurement unit. Within seven working days, the unit will present its decision to the review committee. If the applicant is not satisfied with the decision, the applicant (bidder) can submit the case to the Evaluation Committee with 10 working days. The head of the Evaluation Committee establishes a sub-committee composed of three people. The head of the committee shall be a person experienced in dispute resolution and two members who have sufficient information and knowledge about procurement. The sub-committee is required to make a final decision within seven days.<sup>364</sup> In 2012, the ARC reviewed four cases, each from Da Ariana Afghan Hawayee Shirkat, the Ministry of Public Work, the Ministry of Energy and Water, and the Ministry of Public Health. Consequently, the committee barred two companies from participating in public procurement proceedings for one to two years.<sup>365</sup> Despite its strengths, the procurement law is silent on the issue of provincial procurement.

#### Recommendations:

- The IARCSC should be given adequate financial and human resources financed through the government treasury to carry out its work effectively.
- In order to address the problem of widespread political interference from members of the National Assembly and ministers, recruitment of civil servants should be based on clear and objective criteria. As a first step, the law needs to be revised to include explicit provisions and regulations to prohibit undue political/partisan interference in the appointment, promotion and dismissal of civil servants.

<sup>361</sup> MEC, "3<sup>rd</sup> Six-Month Report, July-December 2012," MEC, (2013): 28–29.

<sup>362</sup> Ibid, Article 32 (1).

<sup>363</sup> Ibid, Article 74 (2).

<sup>364</sup> MoJ, "Procurement Law", 2008: Article 72 (1–5).

<sup>365</sup> Ministry of Finance, "1390 annual performance review report", Office of the Deputy Minister for Administration (2011): 8.

Furthermore, a personnel management system for merit-based recruitment, appraisals and promotions should be developed and implemented.

- Civil servants' salaries and benefits should be based on a uniform, transparent and adequate salary structure financed from the government treasury, in order to create incentives for a corruption-free public sector.
- Afghanistan should pass a standalone whistleblower protection law in line with international standards. The current provisions in the Civil Servants Law referring to the protection of whistleblowers are insufficient.
- The procurement law should be expanded to include comprehensive coverage of provincial and local level procurement.
- The government should establish an independent statutory procurement body that is accountable to the public and which publishes information on awards, contract alterations, and the execution, performance and completion of awarded contracts. The procurement body should ensure the independent monitoring of important government contracts.
- Public sector agencies, i.e., ministries, Da Afghanistan Bank, etc. needs to be required to report to the legislature and the public.

## 5. LAW ENFORCEMENT AGENCIES

### Summary

The MoIA and the AGO are the most influential organisations of law enforcement institutions in Afghanistan. Afghanistan's law enforcement agencies receive sufficient funding from the government budget. This has helped them to improve their infrastructure and human resources substantially in the current year.

However, there is interference in the recruitment process of the MoIA by high-ranking government officials, particularly by MPs. There have also been cases of interference in the prosecution of government officials. This is exacerbated by the fact that prosecutors operate in a highly insecure environment. Thirteen prosecutors have lost their lives in the course of their duties in the past two years.

Although the implementation of the code of conduct has enhanced fairness and to some extent reduced administrative corruption, there are still problems in terms of accountability and transparency in these agencies. The Afghan government struggles to reduce corruption, particularly within the MoIA, which was ranked as the second most corrupt institution in 2013 after the Judiciary. Even though the AGO's office has adequate financial resources to carry out its duties effectively, the weakness in practice is the result of the lack of technical and human resources, and professional staff.

### Structure and organisation

As the leading law enforcement agency, the primary legal provisions governing the operations of the MoIA are included in the police law, national police strategy, and code of conduct, and that of the AGO are included in the law of the prosecutors' office and the strategy.

In its current form the MoIA has six deputy ministers, each having various departments that perform specified duties.<sup>366</sup> The Afghan National Police (ANP), which includes the Afghan Border Police and the Afghan National Civil Order Police, execute their duties in the 34 provinces of the country. The ANP is mainly responsible for enforcing the rule of law, maintain order and security, detect and fight crimes, control borders, and protect the rights, assets and freedoms of both Afghans and foreigners without any form of discrimination.<sup>367</sup>

The AGO is part of the Executive Branch, appointed by the President and endorsed by the Wolesi Jirga.<sup>368</sup> The duty of the AGO is to investigate and file cases against an accused person in the court of law, and is responsible for prosecuting cases filed. The AGO is obligated to be fair and just while investigating and prosecuting cases.<sup>369</sup> The AGO consists of the Primary Court Tsaranwali (prosecutor's office), Appeal Court Tsaranwali and High Court Tsaranwali.<sup>370</sup> The AGO has four

<sup>366</sup> Ministry of Interior Affairs, <http://moi.gov.af/en> (accessed on 2 March 2015).

<sup>367</sup> Ministry of Interior Affairs, "Ten Year Vision for the Afghan National Police", Ministry of Interior Affairs, <http://moi.gov.af/en/page/5718/5729> (accessed on 2 March 2015).

<sup>368</sup> MoJ "Constitution", 2004: Article 64(11).

<sup>369</sup> Attorney General Office, "AGO Strategy", Attorney General Office, <http://ago.gov.af/en/page/4298> (accessed on 3 March 2015).

<sup>370</sup> Ministry of Justice, "Law on Structure and Authority of Attorney General Office", Official Gazette 1117 (1392AH [2013]): Article 6.

deputy public prosecutors and 15 directorates.<sup>371</sup> With its head office in Kabul, the AGO has provincial and district level offices across Afghanistan.

## Assessment

### 5.1 CAPACITY

**Score: 75**

#### 5.1.1 Resources (practice) – To what extent do law enforcement agencies have adequate levels of financial resources, staffing, and infrastructure to operate effectively in practice?

The law enforcement agencies, MoIA and AGO, have adequate financial resources, but still the MoIA lacks human resources. The AGO lacks professional prosecutors at the regional level and physical resources at the central level. External interference in the ANP recruitment process and the lack of technical resources are key challenges for the MoIA.

The MoIA is the second largest recipient of the national budget. The MoIA's present annual budget is AFN 72 billion (US\$1.26 billion)<sup>372</sup>, 16.5 per cent of the national budget, which is more than adequate for the salaries and operating expense of MoIA.<sup>373</sup> Therefore, they have not complained regarding the budget cuts from the government. In 2014, the international community (the US, Poland, Norway, the Netherlands, Japan, Germany, Finland, Denmark, Czech Republic and the EU), aside from training and human resources, contributed US\$494.106 million to the Law and Order Trust Fund for Afghanistan of the MoIA.<sup>374</sup>

The total number of ANP personnel is 148,500.<sup>375</sup> Considering the estimated population of Afghanistan of 29 million, there is one police officer for every 195.3 Afghans. This ratio may be enough for other countries, but according to General Wakeel, it is not enough in a country like Afghanistan that faces war on terrorism and drug smugglers.<sup>376</sup> According to military strategists' estimations, one police officer is enough for 400 citizens in a country during peacetime.<sup>377</sup>

The ANP are responsible for maintaining security and fighting corruption. There is an inspector general, dedicated to investigating corruption-related offences.<sup>378</sup> The police also have a mobile anti-corruption team. It consists of police officers, legal experts, military Tsaranwal, and other specialists in areas of procurement law and penal codes.<sup>379</sup> UNDP has conducted a Training of Trainers for 200 ANP national code of conduct trainers to deliver a basic course on the code of conduct.<sup>380</sup>

<sup>371</sup> MoJ, "Attorney General Office", 2013: Article 7.

<sup>372</sup> MoF, "1394 National Budget", 2014: 57.

<sup>373</sup> Interview with General Wakeel, MoIA, Kabul, 10 March 2015.

<sup>374</sup> UNDP, "Law and Order Trust Fund for Afghanistan (LOTFA)", UNDP in Afghanistan, [www.af.undp.org/content/afghanistan/en/home/operations/projects/crisis\\_prevention\\_and\\_recovery/lotfa.html](http://www.af.undp.org/content/afghanistan/en/home/operations/projects/crisis_prevention_and_recovery/lotfa.html) (accessed on 18 August 2015).

<sup>375</sup> Donald J. Planty and Robert M. Perito, "Police Transition in Afghanistan", United States Institute of Peace, Special Report 322 (February 2013): 1.

<sup>376</sup> Interview with General Wakeel, MoIA, Kabul, 10 March 2015.

<sup>377</sup> Greg Bruno, "Afghanistan's National Security Forces", Council on Foreign Relations, [www.cfr.org/afghanistan/afghanistans-national-security-forces/p19122](http://www.cfr.org/afghanistan/afghanistans-national-security-forces/p19122) (accessed on 3 March 2015).

<sup>378</sup> Interview with General Wakeel, MoIA, Kabul, 10 March 2015.

<sup>379</sup> European Union Police Mission in Afghanistan (EUPOL), "The fight against corruption is being tackled on many fronts", EUPOL, [www.eupol-afg.eu/node/438](http://www.eupol-afg.eu/node/438) (accessed on 3 March 2015).

<sup>380</sup> UNDP in Afghanistan, "Afghan Police Officers receive for the first time an illustrated Code of Conduct, UNDP," [www.af.undp.org/content/afghanistan/en/home/presscenter/pressreleases/2014/02/25/joint-efforts-to-instill-afghan-national-police-code-of-conduct.html](http://www.af.undp.org/content/afghanistan/en/home/presscenter/pressreleases/2014/02/25/joint-efforts-to-instill-afghan-national-police-code-of-conduct.html) (accessed on 20 August 2015).

In terms of technical resources availability, the ANP lacks advanced technologies, including voice and video detection equipment to detect and investigate corruption cases. The ANP received training, particularly in the areas of narcotics and law enforcement through the Combined Security Transition Command – Afghanistan and the US arm of the NATO Training Mission – Afghanistan.<sup>381</sup>

The AGO budget was decreased from AFN 1.43 billion<sup>382</sup> (US\$25,093,035) in 2013/2014 to AFN 1.3 billion (US\$22,807,017) in 2014/2015.<sup>383</sup> This decrease in the budget may be due to the fact that the AGO failed to spend 80 per cent of its development budget.<sup>384</sup> The AGO with a total staff of 5170<sup>385</sup> has enough human resources, but the main problem is the lack of qualified and professional prosecutors, especially at the provincial and district levels. Additionally, there is not enough technical knowledge and physical resources available to prosecutors to perform their duties. This is more endemic in provincial offices. With the financial support of the European Union Police Mission in Afghanistan an electronic CMS has been developed for both the AGO and the MoIA to track down criminal cases and monitor the ANP's performance.<sup>386</sup> The AGO also has a specialised library equipped with more than 7000 law books, newspapers and magazines.<sup>387</sup>

**Score: 100**

### **5.1.2 Independence (law) – To what extent are law enforcement agencies independent by law?**

The legal framework has been designed to ensure the independence of the law enforcement agencies. It also provides the law enforcement agencies with the power to address the problems of maintaining law and order, investigating crimes and corruption, and ensuring public security.

The law regarding appointments in the law enforcement agencies indicate that each appointment shall be based on merit, qualification and experience. According to the ANP strategy, the MoIA shall make appointments to the ANP without consideration of any form of linguistic and ethnic discrimination.<sup>388</sup> To be selected as a non-commissioned police officer, a person should be an Afghan, no less than 18 years of age, be in good health, and shall not be a member of any political party. For entry-level police officers, there are no educational requirements, but for higher positions, a bachelor degree from the police academy or other universities, or police training with a high school diploma is required.<sup>389</sup>

The AGO recruitment system is based on objective and transparent criteria, including education, merit and legal experience. According to the AGO Law on Structure and Authority, prosecutors shall at least have a bachelor degree in law or sharia, have completed an internship within the AGO, and at least three years' work experience in areas of justice and law. Additionally, prosecutors shall have no convictions of any crime or corruption, or political party affiliation.<sup>390</sup> Based on the results of a

<sup>381</sup> GAO, "Afghanistan Security: Department of Defense Effort to Train Afghan Police Relies on Contractor Personnel to Fill Skill and Resource Gaps," GAO-12-293R, Feb. 23, 2012, [www.gao.gov/products/GAO-12-293R](http://www.gao.gov/products/GAO-12-293R) (accessed 18 August 2015).

<sup>382</sup> US\$1 = AFN 57

<sup>383</sup> MoF, "1394 National Budget", 2014: 14.

<sup>384</sup> Zabiullah Jahanmal, "Most Ministries chose Not to Spend Development Budget Funds in 2014," Tolo News, [www.tolonews.com/en/afghanistan/17389-budget-for-today](http://www.tolonews.com/en/afghanistan/17389-budget-for-today) (accessed on 3 March 2015).

<sup>385</sup> EUPOL, "New Gender Policy and Action Plan for AGO", EUPOL, [www.eupol-afg.eu/taxonomy/term/35](http://www.eupol-afg.eu/taxonomy/term/35) (accessed on 3 March 2015).

<sup>386</sup> EUPOL, "Case management System helps to track down criminal cases and monitor ANP Performance," EUPOL, [www.eupol-afg.eu/taxonomy/term/35](http://www.eupol-afg.eu/taxonomy/term/35) (accessed on 3 March 2015).

<sup>387</sup> Attorney General Office, "Library" Attorney General Office, <http://agolibrary.gov.af/> (accessed on 3 March 2015).

<sup>388</sup> Ministry of Interior Affairs, "Afghan National Police Strategy", Ministry of Interior Affairs, <http://moi.gov.af/en/page/5076> (accessed on 4 March 2015).

<sup>389</sup> Ministry of Justice, "Police Personal Affairs Law", Official Gazette 1040 (1389AH [2010]): Article 5–7.

<sup>390</sup> MoJ, "Attorney General Office", 2013: Article 28.



written examination and a job interview, a prosecutorial job offer is made by the AGO. Prosecutors are promoted based on the assessment of their performance, technical skills and ethical conduct, which takes place once a year.<sup>391</sup>

According to the Constitution, the discovery of crimes is the duty of the police and investigation and filing the case against the accused is the responsibility of the Tsaranwali.<sup>392</sup> After commencing and completing the initial investigation of a crime, the case needs to be transferred to the public prosecutor within 24 hours. After completing the investigation, the Tsaranwal either closes the file or refers it to a court for a trial, where a decision and judgement is issued. The AGO and the police are independent in carrying out their tasks. Collaboration between police and prosecutor is essential in carrying out their respective duties.<sup>393</sup>

The police law prohibits government and non-government interference in police duty except in cases allowed by the law.<sup>394</sup> Police officers are not allowed to engage with or become a member of any political party.<sup>395</sup>

The prosecutors cannot be legally instructed by another authority to not prosecute a specific case.<sup>396</sup> The Law on Criminal Procedure Code expressly prohibits a prosecutor to pursue a case in which the victim is a relative or the prosecutor a witness in the case, or as an advocate and/or legal advisor.<sup>397</sup>

**Score: 25**

### **5.1.3 Independence (practice) – To what extent are law enforcement agencies independent in practice?**

The law and strategy of law enforcement agencies ensure their independence, but key government officials' interference and insecurity weaken independence in practice. In particular, the recruitment process of the ANP is affected by interference from powerful government officials.

To improve the independence and professionalism of the law enforcement agencies, international institutions such as the Deutsche Gesellschaft für Internationale Zusammenarbeit, UNDP, USAID, Bureau for International Narcotics and Law Enforcement Affairs, Italy, International Development Law Organization, and the Adam Smith Institution have funded projects in the fields of training, capacity-building and logistic support.<sup>398</sup> Despite these projects and training, corruption continued to shadow the institutions of the law enforcement agencies and the hiring process is influenced and affected by politicians and people in power. The former Interior Minister Ghulam Mujtaba Patang was summoned 93 times by the Wolesi Jirga and 79 times by the House of Elders within ten months of starting his job<sup>399</sup> and received a vote of no confidence from the Parliament in 2013. He argues

<sup>391</sup> Attorney General Office, "AGO Strategy," Attorney General Office, <http://ago.gov.af/en/page/4298> (accessed on 4 March 2015).

<sup>392</sup> MoJ "Constitution", 2004: Article 134.

<sup>393</sup> Ministry of Interior Affairs, "Afghan National Police Strategy", Ministry of Interior Affairs, <http://moi.gov.af/en/page/5076> (accessed on 4 March 2015).

<sup>394</sup> Ministry of Justice, "The Police Law", Official Gazette 862 (2005): Article 27.

<sup>395</sup> Ministry of Interior Affairs, "Police Code of Conduct", Ministry of Interior Affairs, <http://moi.gov.af/en/page/3177/usulnama> (accessed on 4 March 2015).

<sup>396</sup> Interview with Khalil Zar, Prosecutor, Attorney General Office, Kabul, 9 March 2015.

<sup>397</sup> Ministry of Justice, "Law on Criminal Procedure Code", Official Gazette 1132 (1393AH [2014]): Article 14(1).

<sup>398</sup> Afghanistan National Development Strategy, "Justice & Rule of Law Sector Strategy: 1387–1391 (2007/08–2012/13)", (2008): 140–177.

<sup>399</sup> Sean Carberry, "An Afghan Minister Fires Back at Impeachment Attempt", NPR, [www.npr.org/blogs/parallels/2013/07/23/204766731/an-afghan-minister-fires-back-at-impeachmentattempt](http://www.npr.org/blogs/parallels/2013/07/23/204766731/an-afghan-minister-fires-back-at-impeachmentattempt) (accessed on 13 February 2015).

that this action was political because he refused many MPs' request to appoint their relatives in the ministry.<sup>400</sup>

According to Patang, 15,000 request letters were written to the MoIA by MPs, some within the legal framework and some outside the legal framework, but most were on personal demands to select and appoint their relatives in the MoIA.<sup>401</sup> Additional to the MPs' interference, according to the Kabul City Police Chief Muhammad Ayub Salangi some of the ministers and prosecutors frequently try to interfere in Kabul Police Headquarter internal affairs to force the recruitment and hiring of their preferred individuals to different positions.<sup>402</sup>

Interference from key government officials also hampers the work of prosecutors. For instance, in 2010, the former Deputy Attorney General was fired by President Karzai, because he had opened cases against at least 25 Afghan officials: 17 members of Karzai's Cabinet, five provincial governors and three ambassadors. None of these people were prosecuted and some cases were blocked from prosecution by order of President Karzai. He also intervened in stopping the prosecution of Mohammad Zia Salehi, Chief of Administration for the National Security Council, who supposedly had demanded bribes from another Afghan, who was under investigation for corruption by the AGO.<sup>403</sup> This trend of interference continues under the Ghani administration. When President Ghani opened the Kabul Bank case, some people were brought to justice. When the people under investigation stated that President Ghani's economic advisor was allegedly involved in the Kabul Bank affair, the investigation of the Kabul Bank affair slowed down and eventually disappeared.

In the last two years, 13 prosecutors have lost their lives in the course of their duties. Of these, nine were killed in the western region and four were killed in Helmand province.<sup>404</sup> In a gathering of the Afghan Prosecutors Association held in January 2015, all prosecutors collectively stated that if the Afghan government does not provide security for the prosecutors, the number of killed prosecutors would only increase.<sup>405</sup>

## 5.2 GOVERNANCE

**Score: 50**

### 5.2.1 Transparency (law) – To what extent are there provisions in place to ensure that the public can access relevant information on law enforcement?

The transparency provisions in the police and AGO laws are limited by the Constitution. Article 50 of the Constitution states that government organisations shall make all information available to the public, except when harming the rights of others, as well as public security.<sup>406</sup> The Constitution does

<sup>400</sup> Aljazeera, "Karzai contests firing of Afghan minister", Aljazeera, [www.aljazeera.com/news/middleeast/2013/07/201372214513133381.html](http://www.aljazeera.com/news/middleeast/2013/07/201372214513133381.html) (accessed on 13 February 2015).

<sup>401</sup> Sean Carberry, "An Afghan Minister Fires Back at Impeachment Attempt", NPR, [www.npr.org/blogs/parallels/2013/07/23/204766731/an-afghan-minister-fires-back-at-impeachment-attempt](http://www.npr.org/blogs/parallels/2013/07/23/204766731/an-afghan-minister-fires-back-at-impeachment-attempt) (accessed on 13 February 2015).

<sup>402</sup> Ariana News, "Cabinet Ministers interfere in Police Headquarter affairs to seek appointment of their preferred individuals: Police Chief", Ariana News, <http://ariananews.af/regional/cabinet-ministers-interfere-in-policeheadquarter-affairs-to-see-appointment-of-their-preferred-individuals-police-chief/> (accessed on 5 March 2015).

<sup>403</sup> Dexter Filkins and Alissa J. Rubin, "Graft-Fighting Prosecutor Fired in Afghanistan", The New York Times, [www.nytimes.com/2010/08/29/world/asia/29afghan.html?pagewanted=all](http://www.nytimes.com/2010/08/29/world/asia/29afghan.html?pagewanted=all) (accessed on 5 March 2015).

<sup>404</sup> Attorney General Office, "Unfair Justice about attorney office is due to lack of awareness some prosecutors from their responsibilities and activities", Attorney General Office, <http://ago.gov.af/fa/news/41171> (accessed on 5 March 2015).

<sup>405</sup> Attorney General Office, "Unfair Justice about attorney office is due to lack of awareness some prosecutors from their responsibilities and activities", Attorney General Office, <http://ago.gov.af/fa/news/41171> (accessed on 5 March 2015).

<sup>406</sup> MoJ "Constitution", 2004: Article 50.

not, however, define what is understood to be public interest and public security. According to the Access to Information Law, government organisations are required to provide information to citizens upon request.<sup>407</sup> According to the police law, police officials are allowed to give interviews to the media regarding criminal cases and actions taken by the police.<sup>408</sup> But the law does not allow the police to disclose information obtained from or during the performance of their duties, which would cause harm to the subject of the crime. Moreover, a police officer shall not be permitted to disclose information even after he/she has left his/her job. In case of disclosure of prohibited information, the police will be legally prosecuted according to the provisions of the law.<sup>409</sup>

The AGO strategy instructs the Tsaranwali to disclose only the decisions and findings to the attorney and the prosecutor, not to the general public. The AGO publishes general legal issues and information in its journal, *Tsaranwal*.<sup>410</sup>

According to the criminal procedure code, a suspect, accused and plaintiff can have access to information from his/her file inside Tsaranwali, if the information does not undermine the prosecution process, justice and national interest.<sup>411</sup> According to one prosecutor, unless the file is completed, victims of crime do not have access to their files.<sup>412</sup> The same rule applies to cases in the MoIA.

In the spirit of Article 154 of the Constitution, the HOOAC created an asset registration regime. According to the above-mentioned article the President, vice-presidents, ministers, the Attorney General and members of the Supreme Court are required to register their assets. The Law of Overseeing the Implementation of the Administrative Anti-Corruption Strategy of the HOOAC has extended the obligation to register their assets to "Deputy Ministers, Directors, Members of National Assembly (Both Houses), Provincial and District Councils, Independent Commissions/Bodies, Ambassadors, Governors, Judges, Military and Police Officers, District Administrators, Prosecutors, High Ranking Officials (Grade 2 and above), and employees of financial, accounting, audit and procurement department of each government institution."<sup>413</sup>

**Score: 50**

### **5.2.2 Transparency (practice) – To what extent is there transparency in the activities and decision-making processes of law enforcement agencies in practice?**

The public has access to general information from the websites of the law enforcement agencies, including news, organisational charts, annual reports, policies and strategies. The information on the MoIA website is more comprehensive and up to date than that of AGO. Except for the Minister of Interior and Attorney General, the assets information of police officers and prosecutors is not available, either online or in print. As of December 2012, only 66 key government officials' assets had been published, including those of the President, ministers, members of the Supreme Court, provincial governors and the Attorney General.<sup>414</sup> Even though there is no information available in

<sup>407</sup> MoJ, "Access to Information", 2014: Article 6.

<sup>408</sup> MoJ, "Police Law", 2005: Article 30(2).

<sup>409</sup> MoJ, "Police Law", 2005: Article 30(1).

<sup>410</sup> Attorney General Office, "AGO Strategy," Attorney General Office, <http://ago.gov.af/en/page/4298> (accessed on 5 March 2015).

<sup>411</sup> MoJ, "Criminal Procedure Code", 2014: Article 7(11).

<sup>412</sup> Interview with Khalil Zar.

<sup>413</sup> HOOAC, "Public Official's Asset Declaration Strategy," Department of Asset registration (November 2009): 4.

<sup>414</sup> High Office of Oversight and Anti-Corruption, "Assets Declaration", High Office of Oversight and Anti-Corruption, <http://anti-corruption.gov.af/fa/page/test/7663> (accessed on 5 March 2015).

HOOAC publications or on the website, the HOOAC claims that around 8000 government officials have registered their assets.<sup>415</sup>

The MoIA publishes a monthly magazine, *Police*, which covers professional, social and legal issues.<sup>416</sup> It also publishes an annual report about the performance and challenges of ANP.<sup>417</sup> The annual report contains information about the human rights situation in conflict areas, protection of civilians, cross-border shelling, professional trainings, national police strategic goals, criminal investigations and more. Additionally, the MoIA and the AGO also disseminate necessary information through their spokespersons. MoIA's media unit is open to the public and to those who are interested in obtaining information. The AGO has a website, which, as noted above, is not updated on a regular basis, and a journal that is not published on time.<sup>418</sup>

**Score: 50**

### **5.2.3 Accountability (law) – To what extent are there provisions in place to ensure that law enforcement agencies have to report and be answerable for their actions?**

The laws and strategies of law enforcement agencies contain accountability provisions, but the police and AGO laws are silent on independent mechanisms for citizens to complain about misconduct in police actions. However, according to the National Police Code of Conduct, MoIA is responsible for investigating any complaints received from the citizens against the police. Complaints about police professional conduct inside the ministry are submitted to the Inspector General to initiate disciplinary investigations.<sup>419</sup> It should be noted that the staff/employees from the MoIA and the AGO do not enjoy any immunity and can be held responsible for their actions.

According to the Law of Overseeing the Implementation of the Administrative Anti-Corruption Strategy, the police and prosecutors shall report their performance to the HOOAC concerning any case of administrative corruption.<sup>420</sup> Government intelligence agencies, the Department of the Inspector General of the MoIA and the AGO have the authority to conduct investigations of administrative corruption in MoIA. Any accused police officer and other officials of the government are prosecuted by the AGO.<sup>421</sup> The AGO has an anti-corruption directorate, responsible for fighting against corruption within AGO operations at the central and provincial levels.<sup>422</sup> In case of crime, if required, the prosecutors can explain and share their decisions with stakeholders, such as the relevant criminal prosecution units, to cease prosecution.<sup>423</sup>

**Score: 25**

### **5.2.4 Accountability (practice) – To what extent do law enforcement agencies have to report and be answerable for their actions in practice?**

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<sup>415</sup> Rafi Sediqi, "Officials Fail to Register Assets for Anti-Corruption Effort," Tolo News, [www.tolonews.com/en/afghanistan/14945-officials-fail-to-register-assets-for-anti-corruption-effort](http://www.tolonews.com/en/afghanistan/14945-officials-fail-to-register-assets-for-anti-corruption-effort) (accessed on 5 March 2015).

<sup>416</sup> Ministry of Interior Affairs, "Magazines", Ministry of Interior Affairs <http://moi.gov.af/en/article/police-magazine> (accessed on 5 March 2015).

<sup>417</sup> Ministry of Interior Affairs, "Annual Report", Ministry of Interior Affairs, <http://moi.gov.af/en/search?q=annual+reports> (accessed on 5 March 2015).

<sup>418</sup> Attorney General Office, "Documents," Attorney General Office, <http://ago.gov.af/en/documents> (accessed on 6 March 2015).

<sup>419</sup> Ministry of Interior Affairs, "Afghan National Police Code of Conduct", Ministry of Interior Affairs, <http://moi.gov.af/en/page/3177/usulnama> (accessed on 6 March 2015).

<sup>420</sup> MoJ, "Anti-Corruption Strategies", 2008: Article 18.

<sup>421</sup> Ministry of Interior Affairs, "Afghan National Policy Strategy", Ministry of Interior Affairs, <http://moi.gov.af/en/page/5076> (accessed on 6 March 2015).

<sup>422</sup> MoJ, "Attorney General Office", 2013: Article 7(2).

<sup>423</sup> Interview with Khalil Zar.

In practice the police and prosecutors are not sufficiently accountable for their actions in all cases. As the public prosecutor's office does not have an up-to-date website and its journal is not printed on time, it does not provide a periodic account of its activities to the public. On the other hand, the Afghanistan Independent Human Rights Commission points out that government officials, including the MoIA and the AGO, have frequently engaged in corrupt practices.<sup>424</sup> In recent times, the Afghan president dismissed 15 police chiefs and five border police commanders involved in corruption cases in Herat.<sup>425</sup>

The General Inspection unit of the MoIA conducts internal investigations and reviews citizens' complaints. The 119 complaint forum is open 24 hours and it allows citizens to file their complaints. According to the MoIA, the complaints of citizens are answered in a timely manner.<sup>426</sup> During the last year, the General Inspection unit investigated 145 citizen complaints about the police, of which 51 complaints came from the police about the police and 35 came from residents about the local police.<sup>427</sup>

According to the Afghanistan Independent Human Rights Commission many individuals detained by the ANP in Kandahar province claimed mistreatment and torture in ANP custody. Afghan Local Police and ANP personnel were largely unaware of their responsibilities and defendants' legal rights.<sup>428</sup> This shows that the police do not feel accountable for their actions, and the MoIA supervision of its staff's activities is weak.

**Score: 75**

#### **5.2.5 Integrity mechanism (law) – To what extent is the integrity of law enforcement agencies ensured by law?**

The law enforcement agencies have established rules dealing with issues of gifts and conflicts of interest, but rules on post-employment restrictions and hospitality do not exist.

In 2011, the MoIA developed a code of conduct for the ANP according to the United Nations Convention Against Corruption requirements. The code of conduct addressed fairness, honesty and integrity as a significant mechanism to provide guidance for the police to encourage them to perform their duties with high standards and faithfulness. The MoIA Disciplinary Panel/Board was established to take legal actions against any police personnel who violate this code of conduct.<sup>429</sup>

Similarly, Tsaranwali has a code of conduct for its personnel working in the capital and the provinces. This was developed in 2007 to enhance transparency and fairness in prosecutors' tasks. The Tsaranwali has the responsibility to hear ethics code violations by any member and impose sanctions. In the case of any ethical problems, the Tsaranwali's internal ethics committee provides solutions and further direction.<sup>430</sup>

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<sup>424</sup> US Department of State, "2013 Human Rights Report: Afghanistan" (2013): 29–30, [www.state.gov/j/drl/rls/hrrpt/2013/sca/220386.htm](http://www.state.gov/j/drl/rls/hrrpt/2013/sca/220386.htm) (accessed on 7 March 2015).

<sup>425</sup> EUPOL, "Corruption and Human Rights violations are still a huge challenge on the way to a trustworthy Afghan National Police," EUPOL, [www.eupol-afg.eu/node/537](http://www.eupol-afg.eu/node/537) (accessed on 12 March 2015).

<sup>426</sup> Interview with General Wakeel, MoIA, Kabul, 10 March 2015.

<sup>427</sup> Ministry of Interior Affairs, "Improving Prison Conditions and Promoting Human Rights and Gender Equality within the Ministry of Interior", Ministry of Interior Affairs, <http://moi.gov.af/en/page/6339> (accessed on 7 March 2015).

<sup>428</sup> US Department of State, "2013 Human Rights Report: Afghanistan", [www.state.gov/j/drl/rls/hrrpt/2013/sca/220386.htm](http://www.state.gov/j/drl/rls/hrrpt/2013/sca/220386.htm) (accessed on 7 March 2015).

<sup>429</sup> Ministry of Interior Affairs, "Afghan National Police Code of Conduct," <http://moi.gov.af/en/page/3177/usulnama> (accessed on 8 March 2015).

<sup>430</sup> Attorney General Office, "AGO Strategy," Attorney General Office, <http://ago.gov.af/en/page/4298> (accessed on 8 March 2015).

To avoid conflicts of interest, the police personnel<sup>431</sup> and the prosecutors,<sup>432</sup> during their term in office, shall not engage in any profitable business with the state. The police are prohibited from accepting any kind of gifts, presents or favours, which may hinder them in performing their official responsibilities.<sup>433</sup> There is no law restricting or prohibiting law enforcement agency officials from conducting business after resigning or retiring from their job. "In the proposed HOO Law and in the revised Afghan Penal Code specific sanctions are mentioned for public officials who refuse or refrain to register and declare their assets."<sup>434</sup>

**Score: 50**

#### **5.2.6 Integrity mechanism (practice) – To what extent is the integrity of members of law enforcement agencies ensured in practice?**

In recent years the law enforcement agencies' code of conduct implementation has improved, but law enforcement officials continue to regularly violate the code of conduct.

Training has been provided to MoIA and AGO staff, both by the respective agencies and international organisations, to enhance integrity. To improve ethical standards, "as of 24 February 2014, a total of 10,393 ANP personnel have attended Code of Conduct training, including 818 Police Commanders. The training was conducted by the UNODC, the European Union Police Mission in Afghanistan (EUPOL), and UNDP partnered with the government."<sup>435</sup> Since 2014, the Afghan Justice Organisation has offered a seminar on the code of conduct once a week for 10 to 15 prosecutors.<sup>436</sup>

In addition to the training programmes in integrity contents, law enforcement agencies have made efforts to ensure the integrity of their staff. For example, the police perception survey of 2011 indicates some signs of progress in reducing corruption. 53 per cent of the surveyed say that there is a lot or some corruption in the ANP.<sup>437</sup> The Transparency International's 2010 Corruption Perceptions Index gave a score of 1.4 out of 10 and a score of 0.8 out of 10 in its 2012 Corruption Perceptions Index, indicating an increase in corruption.<sup>438</sup> In 2013, 33 per cent of Afghans believed that the police were involved in corruption. 51 per cent of Afghans admitted having given bribes to the police at least once during the previous year, with the result that the police force was ranked as the second most corrupt organisation in Afghanistan after the Judiciary.<sup>439</sup>

Violations of the code of conduct by police personnel and prosecutors are not uncommon. In heart, a Central Investigation Department officer was arrested by the police for receiving bribes. As the case is under investigation, no disciplinary measures have been imposed yet.<sup>440</sup> Serious violations

<sup>431</sup> Ministry of Justice, "The Decrees of the President of Islamic Republic of Afghanistan and the Police Law," Officials Gazette 862 (1384AH [2005]): Article 31.

<sup>432</sup> MoJ "Constitution", 2004: Article 151.

<sup>433</sup> Ministry of Interior Affairs, "Afghan National Police Code of Conduct", <http://moi.gov.af/en/page/3177/usulnama> (accessed on 9 March 2015).

<sup>434</sup> High Office of Oversight and Anti-Corruption, Frequently Ask Questions, <http://anti-corruption.gov.af/Content/files/ARFormFAQEnglish.pdf> (accessed on 10 March 2015).

<sup>435</sup> UNDP, "Afghan Police Officers receive for the first time an illustrated Code of Conduct", [www.af.undp.org/content/afghanistan/en/home/presscenter/pressreleases/2014/02/25/joint-efforts-to-instill-afghan-national-police-code-of-conduct.html](http://www.af.undp.org/content/afghanistan/en/home/presscenter/pressreleases/2014/02/25/joint-efforts-to-instill-afghan-national-police-code-of-conduct.html) (accessed on 11 March 2015).

<sup>436</sup> Afghanistan Justice Organization, "Ethics Seminar at Anti-Terrorism Prosecution Department On New Criminal Procedure Law" Afghanistan Justice Organization", <http://afghanjustice.org/article/articledetail/ethcis-seminar-at-antiterrorism-prosecution-department-on-new-criminal-procedure-law-17th> (accessed on 10 March 2015).

<sup>437</sup> UNDP, "Police Perception Survey: The Afghan Perspective", (2011): 18.

<sup>438</sup> Transparency International, "Corruption Perceptions Index 2010" and "Corruption Perceptions Index 2012", [www.transparency.org](http://www.transparency.org) (accessed 15 October 2015).

<sup>439</sup> Saleha Sodat, "Report Shows Judiciary is Most Corrupt Institution in Afghanistan", [www.tolonews.com/en/afghanistan/11176-report-shows-judiciary-is-most-corrupt-institution-in-afghanistan-](http://www.tolonews.com/en/afghanistan/11176-report-shows-judiciary-is-most-corrupt-institution-in-afghanistan-) (accessed on 11 March 2015).

<sup>440</sup> EUPOL, "Corruption and Human Rights violations are still a huge challenge on the way to a trustworthy Afghan National Police," EUPOL, [www.eupol-afg.eu/node/537](http://www.eupol-afg.eu/node/537) (accessed on 10 March 2015).



of the code of conduct are considered as an abuse of authority and lead to administrative or judicial prosecution. For example, most recently, the President removed 20 police officers who were accused of violating the code of conduct from Herat province. The case is under investigation.<sup>441</sup> Moreover, according to the AGO, four prosecutors who violated the code of conduct have been detained.<sup>442</sup>

The Inspector General within the MoIA has the mandate to deal with the violation of ethics and disciplinary norms.<sup>443</sup> Similar provisions are implemented by the Tsaranwali. An internal AGO Ethics Committee resolves ethical controversies and provides direction on ethical problems.<sup>444</sup>

### 5.3 ROLE

Score: 50

#### 5.3.1 Corruption prosecution (law and practice) – To what extent do law enforcement agencies detect and investigate corruption cases in the country?

The law enforcement agencies have played some role in fighting corruption and eliminating bribery at the lower level, but at the higher level they are not able to fight pervasive corruption.

Both the police and prosecutors have the legal powers to apply proper investigative techniques in detecting corruption cases. However, in practice the lack of technical capabilities, like fingerprint machines, security cameras, as well as audio and video recorders to detect and investigate corruption cases limits the law enforcement agencies' work and effectiveness.<sup>445</sup> The police have the authority to announce and warn, check IDs, order to vacate an area, take a person into custody and undertake investigations.<sup>446</sup>

A prosecutor can request the freezing of assets of public officials and individuals suspected of corruption. The AGO requested that the United Kingdom share information about money transfers, bank records and freeze the assets of the perpetrators in the Kabul Bank case.<sup>447</sup> According to a Guardian report from 2012, the Kabul Bank case was the biggest banking scandal in Afghanistan. Around US\$900 million were stolen and transferred abroad from Kabul Bank in 2010 by the Afghan elites. The majority of the stolen money went to 12 people, including brothers of the former President and first Vice-President.<sup>448</sup> As a result of the establishment of the National Unity Government in September 2014, US\$12 million out of the total US\$900 million have been returned to the Afghan government.<sup>449</sup>

<sup>441</sup> Ghafoor Saboory, "Ghani Sacks Officials in Herat Visit", Tolo News, [www.tolonews.com/en/afghanistan/17635-ghani-sacks-officials-in-herat-visit\\_blank](http://www.tolonews.com/en/afghanistan/17635-ghani-sacks-officials-in-herat-visit_blank) (accessed on 10 March 2015).

<sup>442</sup> Ariana News, "7 Ex-ministers to be prosecuted for corruptions", <http://ariananews.af/latest-news/7-ex-afghan-ministers-to-be-prosecuted-for-corruptions/> (accessed on 12 March 2015).

<sup>443</sup> Ministry of Interior Affairs, "Afghan National Police Code of Conduct", <http://moi.gov.af/en/page/3177/usulnama>

<sup>444</sup> Attorney General Office, "AGO Strategy", Attorney General Office, <http://ago.gov.af/en/page/4298> (accessed on 10 March 2015).

<sup>445</sup> Interview with General Wakeel, Kabul, MoIA, 10 March 2015.

<sup>446</sup> MoJ, "Police Law", 2005: Article 9.

<sup>447</sup> MEC, "Unfinished business: The Follow up report on Kabul Bank", (2014): 12, [www.mec.af/files/2014\\_10\\_02\\_Kabul\\_Bank\\_Follow-Up\\_Report.pdf](http://www.mec.af/files/2014_10_02_Kabul_Bank_Follow-Up_Report.pdf) (accessed on 12 March 2015).

<sup>448</sup> Emma Graham-Harrison, "Afghan elite ransacked USD 900 Million From Kabul Bank, inquiry finds", The Guardian, [www.theguardian.com/world/2012/nov/28/afghan-elite-ransacked-kabul-bank](http://www.theguardian.com/world/2012/nov/28/afghan-elite-ransacked-kabul-bank) (accessed on 12 March 2015).

<sup>449</sup> Shakeela Ibrahimkhail, "Kabul Bank Corruption Case Closed, Supreme Court Upholds Ruling", Tolo News, [www.tolonews.com/en/afghanistan/17355-kabul-bank-corruption-case-closed-supreme-court-upholds-ruling](http://www.tolonews.com/en/afghanistan/17355-kabul-bank-corruption-case-closed-supreme-court-upholds-ruling) (accessed on 12 March 2015).



Most recently, seven cases implicating ex-ministers in the Kabul Bank corruption case were referred by the AGO to the Supreme Court for prosecution.<sup>450</sup> This is the only case that shows the ability of AGO in investigating the cases of higher-level government officials involved in corruption.

Last year, the MoIA detected and investigated approximately 103 cases related to kidnapping, administrative corruption and organised crime, which resulted in the arrest of 180 suspects whose cases were submitted to the country's courts.<sup>451</sup> This is a fairly small number considering the extent of smaller-scale corruption in the country.

#### **Recommendations:**

- A standardised policy for appointments and promotions within the ANP and the AGO, based on meritocracy and integrity, should be established and implemented.
- A public complaints mechanism and independent police commission should be set up to monitor the integrity of the ANP and hold it publicly accountable.
- Mandatory ethics and anti-corruption training should be incorporated into basic police training and a special division in the police to investigate cases of corruption in a transparent manner should be established.
- An anti-corruption deputy portfolio should be set up under the AGO for a team of special prosecutors for corruption cases.
- A mechanism should be set up for cross-institutional collaboration between the Anti-Corruption Agency, the ANP and the AGO. This mechanism should clearly identify the three agencies' roles and responsibilities, and clarify lines of communication.
- An oversight function should be established, independent of the ANP structure, to receive complaints against the police. The office must have a mandate to investigate complaints independently and to regularly publish public reports.
- Measures for the physical security of the AGO and public prosecutors who deal with sensitive corruption cases should be increased.
- Salaries and benefits of the AGO and public prosecutors should be reviewed to ensure that their salaries are proportionate to their responsibilities and the risks attached to these responsibilities.

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<sup>450</sup> Ariana News, "7 Ex-ministers to be prosecuted for corruptions", <http://ariananews.af/latest-news/7-ex-afghan-ministers-to-be-prosecuted-for-corruptions/> (accessed on 12 March 2015).

<sup>451</sup> Ministry of Interior Affairs, "Deputy Ministry of Security", <http://moi.gov.af/en/page/dms/security> (accessed on 12 March 2015).

## 6. ELECTORAL MANGEMENT BODY (INDEPENDENT ELECTION COMMISSION)

### Summary

The IEC is an important institution of the Afghan government. Legally the IEC is mandated to hold elections in a fair, impartial and independent manner.

The assessment shows that the IEC has sufficient financial, human, physical and technical resources to perform its duties during election and non-election periods. It files and publishes adequate information on its decisions and activities for the public in a timely manner. Domestic and international observers are allowed to participate in all stages of the election process.

On the other hand, the performance and administration of the IEC in managing elections is found to be unsatisfactory, mainly due to government officials' interference, violation of the code of conduct by IEC staff/employees/members and the lack of a strong mechanism to regulate candidates' campaign expenses. As a result, the IEC could not aggregate 2014 election results accurately and efficiently, which in turn created long political disputes between the presidential candidates.

### Structure and organisation

The IEC was formed in 2006. It retained its name from the Joint Electoral Management Body. Constitutionally, the IEC is required to head and supervise elections and referenda in line with the provisions of the Election Law in a free, impartial and transparent manner.<sup>452</sup> The IEC is mandated to head and supervise presidential, parliamentary, provincial, district, village, municipal council and mayoral elections.

The IEC is an independent national government institution, free from the authority and/or influence of the Executive, the Legislative and the Judiciary.<sup>453</sup> In its current structure, the IEC has nine commissioners who elect a chairperson and a deputy chairperson from among themselves. Moreover, the IEC has a Chief Electoral Officer, two deputies, i.e., the Deputy of Operation and the Deputy of Administration, and nine departments. The IEC's administrative and operational functions are managed by its secretariat. The secretariat is supervised by the Chief Electoral Officer, who is appointed by the President in agreement with the majority of the IEC commissioners. For an effective control and management of electoral activities, the secretariat has created eight regional offices and 34 provincial offices.<sup>454</sup> The provincial offices are headed by Provincial Electoral Officers. Each regional office has a Regional Manager responsible for supervising the Provincial Electoral Officers' activities.

Since its establishment, the IEC has conducted and supervised two presidential, one parliamentary and two provincial elections. The IEC is mandated to conduct and supervise all elections in line with the provisions of the Election Law.

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<sup>452</sup> MoJ "Constitution", 2004: Article 156.

<sup>453</sup> Independent Election Commission, "Strategic Plan of the Independent Election Commission of Afghanistan (1391–1396AH [2011–2016])", Independent Election Commission (n.d): 11.

<sup>454</sup> Independent Election Commission, "Strategic Plan of the Independent Election Commission of Afghanistan 2011–2016," Independent Election Commission (n.d.): 19–20.

## Assessment

### 6.1 CAPACITY

Score: 75

#### 6.1.1 Resources (practice) – To what extent does the electoral management body (IEC) have adequate resources to achieve its goals in practice?

The IEC has an adequate budget to run its duties during non-election periods. During election periods the budget is not enough, therefore it asks the international community for financial support. The IEC has sufficient human, technical and physical resources to perform its duties at the central and provincial levels.

The IEC receives its budget from the Ministry of Finance in a timely manner. But there is fluctuation in the amount of financial resources (see Figure 1.1). For instance, during the 2010 parliamentary election (1389 A.H), the IEC budget was AFN 127.852 million (US\$2.636 million), in 2011 (1390) the budget was slightly decreased to AFN 119.184 million (US\$2.536 million).<sup>455</sup> This decrease was mainly due to the non-election period. In (2012) (1391) the budget was further decreased to AFN 108.053 million (US\$2.161 million),<sup>456</sup> but in 2013 (1392), the budget was increased to AFN 147.644 million (US\$2.59 million).<sup>457</sup> A year later, to conduct the presidential and provincial council elections of 2014 (1393), the IEC budget jumped to AFN 228.885 million (US\$4.015 million),<sup>458</sup> a 55 per cent increase compared to 1392.<sup>459</sup> In 2015 (1394), the IEC was awarded a budget of AFN 151.218 million (US\$2.653 million),<sup>460</sup> a 34 per cent decrease compared with that of 1393. The IEC also receives large amounts of funds from the international community. In 2014, the total election expenditure paid by the international community for the national and provincial elections was US\$138 million.

The reason the IEC budget fluctuates is twofold. First, the budget fluctuation depends on the election and non-election period. During the election period, the IEC budget is increased, because additional election-related expenses occur. Second, the budget fluctuation also depends on the flow of foreign aid and domestic revenues.

The IEC has demonstrated that it has adequate human, physical and technical resources to manage its operation. According to the former Chief Electoral Officer of the IEC, staff are hired in a transparent way, based on education and experience without any linguistic or gender discrimination.<sup>461</sup> The commission has both permanent civil servants and temporary staff. Temporary staff is hired for the election period only.

According to the head of the Kabul Provincial Election Office, IEC permanent staff is experienced and professional with appropriate academic qualifications. The same source stated, however, that the recruitment of qualified and well-educated temporary staff is quite difficult for the IEC.<sup>462</sup> Due to the lack of education, cultural conditions and security threats, the hiring of female staff is also a challenging task. However, in the 2014 elections, the IEC was able to recruit a total of 1529 female

<sup>455</sup> Ministry of Finance, "1390 National Budget", Directorate of General Budget (2011): 21.

<sup>456</sup> Ministry of Finance, "1391 National Budget", Directorate of General Budget (2012): 22.

<sup>457</sup> MoF, "1393 National Budget", 2014: 39.

<sup>458</sup> MoF, "1393 National Budget", 2014: 39.

<sup>459</sup> European Union, "European Union Election Assessment Team", European Union (2014): 12.

<sup>460</sup> MoF, "1394 National Budget", 2015: 58.

<sup>461</sup> Interview with Zia-ul-Haq Amarkhail, former CEO of IEC, Kabul, 27 April 2015.

<sup>462</sup> Interview with Awal Rahman Roodwal, Head of election Kabul Province, Kabul, 22 April 2015.

staff members. Of these, 433 were permanent and the rest were temporary staff.<sup>463</sup> The hiring of female staff helped the commission to facilitate the participation of women in the election, encouraging them to come to the polling stations to vote.

The IEC offices in the 34 provinces are well equipped with IT equipment, internet facilities, laptops, stationary and furniture.<sup>464</sup> Transportation and communication play a significant role in easing election activities. Therefore, the IEC central and provincial offices have sufficient facilities for transport and communication to conduct their work.<sup>465</sup> Moreover, the IEC has a systematic archive to maintain organised data collection and documents. Data about the election activities are comprehensively available on the IEC's website.

With the technical support of UNDP, the IEC offers training courses for its staff, especially in the non-election period. This includes assistance in the geo-coding of the polling centres, training in the Geographic Information System, and verification and classification of the polling centre database.<sup>466</sup> Norway provided financial support, and through regular meetings and briefings, engaged in policy debates concerning different aspects of elections. "Norway has supported election observation activities through the University of Oslo and also through the OSCE."<sup>467</sup>

**Score: 100**

#### **6.1.2 Independence (law) – To what extent is the electoral management body independent by law?**

The IEC Strategic Plan has important provisions designed to ensure its independence and impartiality. IEC recruitment is based on merit and non-discretionary criteria, and interference in IEC activities is strictly prohibited.

Legally, the IEC is an independent institution anchored in Article 156 of the Constitution.<sup>468</sup> The IEC emphasises the impartiality of its staff to ensure its independence. According to the IEC Strategic Plan, the IEC carries out its duties and responsibilities "in line with its provisions in a professional, impartial, and independent manner."<sup>469</sup> The recruitment process in the IEC is transparent. For example, a person who is selected as a member of the IEC shall have a good reputation in society, competence in electoral activities, at least five years of working experience with a bachelor degree, and three years working experience with a graduate degree or higher. Moreover, the members/staff/employees of the IEC shall not have membership in any political party during their term of service. They shall not have been convicted of any crime against humanity and/or felony.<sup>470</sup>

The IEC, with its central office in Kabul, has one secretariat and provincial offices in all 34 provinces. The President selects nine commissioners out of 27 eligible applicants who meet the above-mentioned criteria, for a six years term in office.<sup>471</sup> The commissioners shall be selected based on

<sup>463</sup> UNDP, "Enhancing Legal and Electoral Capacity for Tomorrow (2012–2015)", UNDP ELECT II (2013): 74.

<sup>464</sup> Interview with Awal Rahman Roodwal.

<sup>465</sup> Interview with a senior employee of the IEC, name withheld with request, Kabul, 29 April 2015.

<sup>466</sup> UNDP, 2013: 63.

<sup>467</sup> Norad Evaluation Department, "Evaluation of Norwegian Development Cooperation with Afghanistan 2011–2012," NORAD (2012): 69.

<sup>468</sup> MoJ "Constitution", 2004: Article 156.

<sup>469</sup> Independent Election Commission, "Strategic Plan of the Independent Election Commission of Afghanistan 2011–2016", Independent Election Commission (n.d): 11.

<sup>470</sup> Ministry of Justice, "Law on the Organization, Duties and Authorities of Independent Election Commission", Official Gazette 1112 (1393AH [2013]): Article 7.

<sup>471</sup> MoJ, "Independent Election Commission", 2013: Article 8(4).

qualification and experience. The head, deputy head and secretary of the IEC are elected through a free, secret and direct vote from among the IEC commissioners for a three-year term.<sup>472</sup>

Permanent staff members are recruited based on the Afghanistan Civil Service Law. Based on the procedures and requirements of Article 2 and 3 of the Regulation on Temporary Electoral Staff Recruitment, the temporary staff of the election commission is selected by the IECS at the central, provincial and district levels.<sup>473</sup> The selection of the Provincial Electoral Officers from different provinces aims to reduce the risk of corruption, and the chances of fraud in the election process. Thus, according to the Law on the Organisation, Duties and Authorities of Independent Election Commission, the heads of the provincial offices/Provincial Electoral Officers of the IEC may not be hired from the same provinces.<sup>474</sup>

IEC staff members are protected by law and cannot be removed from their position without legal justification. Nevertheless, any member of the IEC, including its head, can be dismissed from his/her position if he/she commits a crime, joins any political party, is continuously absent for more than 20 days without legal reasons, suffers from a long-lasting and incurable disease or violates the Election Law.<sup>475</sup>

It is worth mentioning that there is a clear legal division of power between IEC commissioners and the secretariat. The commissioners are responsible for designing policies, whereas the secretariat is an executive body and its duty is to implement policies designed by IEC commissioners.<sup>476</sup> The secretariat is not allowed to interfere in the affairs of commissioners, and vice versa. The Chair of the IEC is responsible for leading the overall activities of the commission and the secretariat, chair the meetings, and supervise the implementation of the budget.<sup>477</sup> The secretariat is obligated to perform its duties in accordance with the provisions of the Election Law and the procedures prepared by IEC commissioners.<sup>478</sup>

## **Score: 25**

### **6.1.3 Independence (practice) – To what extent does the electoral management body function independently in practice?**

In practice, the IEC cannot function independently because of political interference in the election process. To rebuild the confidence of the IEC, the government has tried to bring about reforms in the electoral system. With the help of UNDP's Enhancing Legal and Electoral Capacity for Tomorrow, the IEC's drafting of the Strategic Plan 2011–2015 aimed to "build trust among stakeholders and gain support for the IEC and the electoral process, reduce electoral expenses through the development of professional capacity, building of infrastructure and better management of resources, establish the IEC as a Centre of Excellence, and conduct elections, according to the law."<sup>479</sup> In addition to this, the IEC also went through an organisational reform in 2013, though it is still generally not perceived as an independent institution by some public and civil society organisations. According to independent observers, commissioners were selected based on

<sup>472</sup> MoJ, "Independent Election Commission", 2013: Article 5(2).

<sup>473</sup> Independent Elections Commission, "Regulation on Temporary Electoral Staff Recruitment", Independent Elections Commission (2010): Article 2–3.

<sup>474</sup> MoJ, "Independent Election Commission", 2013: Article 19(4).

<sup>475</sup> MoJ, "Independent Election Commission", 2013: Article 10 (1).

<sup>476</sup> Independent Election Commission, "Strategic Plan of the Independent Election Commission of Afghanistan 2011–2016", (n.d): 14.

<sup>477</sup> MoJ, "Independent Election Commission", 2013: Article 15.

<sup>478</sup> MoJ, "Independent Election Commission", 2013: Article 16.

<sup>479</sup> Hugo Jackson, "The A to Z Guide to Afghanistan Assistance", Afghanistan Research and Evaluation Unit (2012): 100.

nepotism and relation with senior government officials including President Karzai and his vice-presidents.<sup>480</sup>

During the 2014 elections, the deputy chairperson of the IEC openly criticised the Afghan government for its direct interference in the administrative affairs of the IEC. According to the Free and Fair Election Forum of Afghanistan (FEFA) report, the majority of interference, i.e., manipulating the election results, came from government officials, including police officers, security forces and district governors.<sup>481</sup>

According to the media reporting in Afghanistan, the IEC was accused of massive fraud, interference and causing long disputes between the presidential candidates. Immediately after the establishment of the National Unity Government in September 2014, the President and the CEO reached an agreement to bring about possible legal and institutional reforms in the IEC structure.<sup>482</sup> The donors, particularly the EU, declared that without reform in the election system their financial support would be halted for the forthcoming parliamentary election in 2015.<sup>483</sup> The public has also raised concerns, arguing that without proper reform in the election system they will not go to the polling stations next time.<sup>484</sup>

In order to find out Afghan people's views on election reforms, Democracy International conducted a survey throughout the country in 2015. Overall 4020 people were asked about the measures to be taken to avoid fraud in the election system.<sup>485</sup> 92.3 per cent of them suggested the importance of electoral system reform.<sup>486</sup> To address the issue, the National Unity Government established a reform commission. The presently established reform commission chairman promised reforms and the removal of some of the IEC commissioners.<sup>487</sup> This shows that the IEC cannot perform its task in a professional and non-partisan manner unless reform takes place at a structural level.

As a result of engagement in partisan activities and allegations of fraud during the 2014 election, around 10,000 temporary IEC employees were blacklisted and three permanent IEC staff members, who were heading the provincial IEC offices in Faryab, Khost and Paktika provinces, were dismissed from their positions.<sup>488</sup>

During the presidential election, Abdullah Abdullah's campaign team publicised audio tapes recording the IEC head of the secretariat ordering that the ballot boxes be stuffed in favour of Dr

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<sup>480</sup> Gran Hewad, Martine van Bijlert and Thomas Ruttig, "A Hasty Process: New Independent Election Commission announced", Afghan Analyst Network, [www.afghanistan-analysts.org/a-process-fast-and-patchy-new-independent-elections-commission-announced/](http://www.afghanistan-analysts.org/a-process-fast-and-patchy-new-independent-elections-commission-announced/) (accessed on 26 April 2015).

<sup>481</sup> Free and Fair Election Forum of Afghanistan, "Presidential Runoff Preliminary Report", Free and Fair Election Forum of Afghanistan (2014): 6.

<sup>482</sup> European Union, "European Union Election Assessment Team", European Union (2014): 6–7.

<sup>483</sup> Center for Strategic and Regional Studies, "What will Electoral Reforms Commission Do?", Center for Strategic and Regional Studies, <http://csrskabul.com/en/blog/what-will-electoral-reforms-commission-do/> (accessed on 27 April 2015).

<sup>484</sup> Supporting Open Media in Afghanistan, "No measures have been taken toward the establishment of parliamentary elections by the National Unity Government", NAI, <http://tfp.nai.org.af/tfp/blog/no-measures-have-been-taken-toward-the-establishment-of-parliamentary-elections-by-the-national-unity-government/> (accessed on 28 April 2015).

<sup>485</sup> Democracy International, "Elections and Civic Education Lessons Learned Survey", Democracy International (2015): 1.

<sup>486</sup> Democracy International, 2015: 3.

<sup>487</sup> Sayed Tariq Majidi, "Barkazai Promises Reform, Decision on Removal of Current Election Commission Members", Tolo News, [www.tolonews.com/en/afghanistan/18720-barkazai-promises-reform-decision-on-removal-of-current-election-commission-members](http://www.tolonews.com/en/afghanistan/18720-barkazai-promises-reform-decision-on-removal-of-current-election-commission-members) (accessed on 28 April 2015).

<sup>488</sup> Saleha Sodat, "Three Top Officials Removed for 10 Years Each: ECC", Tolo News, [www.tolonews.com/en/afghanistan/18576-three-top-iec-officials-removed-for-10-years-each-ecc](http://www.tolonews.com/en/afghanistan/18576-three-top-iec-officials-removed-for-10-years-each-ecc) (accessed 28 April 2015).

Ashraf Ghani. The head of the secretariat vehemently denied the accusations and resigned from his position.<sup>489</sup>

## 6.2 GOVERNANCE

Score: 75

### 6.2.1 Transparency (law) – To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the IEC?

There are provisions in place to ensure that the public can obtain information about the activities and decisions of the IEC. The election date shall be announced 180 days before the election.<sup>490</sup> The timely publication of the election schedule, the list of the candidates and the list of the voters is the duty of the IEC. The IEC must inform the public about the electoral calendar at least 120 days prior to an election.<sup>491</sup> Immediately after the completion of the election nomination period, the IEC is obligated to publish the preliminary list of candidates.<sup>492</sup> This includes both the presidential and the provincial candidates. Furthermore, the IEC is required to display the preliminary list of candidates at the polling centres soon after the completion of the nomination period<sup>493</sup> or before polling begins. According to the Electoral Law, prior to election day, the voter list (names of the persons eligible to vote) shall be displayed by the IEC in each specific polling station.<sup>494</sup> Moreover, the IEC has a library where both hard and soft copies of the data on electoral activities are available for public access.

The IEC is required to announce and publish the final election results after completing the counting process and addressing counting-related complaints by the Independent Election Complaint Commission (IECC).<sup>495</sup> The media plays a vital role in informing the IEC about violations of elections rules and regulations. Therefore, the IEC is obligated to establish its Media Commission at least 90 days prior to the election. The duty of the Media Commission is to monitor fair and impartial reporting, broadcast electoral campaign, and address violations related to the policies and procedures of the mass media.<sup>496</sup>

The Electoral Law has specified the amount of campaign spending permitted to presidential and provincial candidates. According to Article 49 (1) of the Electoral Law a candidate is not allowed to spend more than AFN 10 million (US\$175,438) in a presidential election and AFN 1 million (US\$17,544) in a Wolesi Jirga election campaign.<sup>497</sup> The amounts of spending for provincial, municipality and district election campaigns are also specified in the same article. According to the Regulation on Managing Campaign Finance (RMCF), the IEC is obligated to:

Publish the submitted campaign finance report of candidates after scrutiny. The IEC shall also publish the total amount of contributions the candidates receive from their supporters during the

<sup>489</sup> Office for Democratic Institutions and Human Rights, "Presidential and Provincial Council Elections", Office for Democratic Institutions and Human Rights (2014): 32.

<sup>490</sup> Ministry of Justice, "Electoral Law," Official Gazette 1112 (1392AH [2013]): Article 43(1).

<sup>491</sup> MoJ, "Electoral Law", 2013: Article 43(2).

<sup>492</sup> MoJ, "Electoral Law", 2013: Article 46(1).

<sup>493</sup> MoJ, "Electoral Law", 2013: Article 46(4).

<sup>494</sup> MoJ, "Electoral Law", 2013: Article 7(3).

<sup>495</sup> MoJ, "Electoral Law", 2013: Article 59(3).

<sup>496</sup> MoJ, "Electoral Law", 2013: Article 61(1).

<sup>497</sup> MoJ, "Electoral Law", 2013: Article 49(1).



election campaigns. Moreover, the contribution and expenses made by the candidates, which are even less than AFN 20000 (US\$350) shall be published by the IEC for public information.<sup>498</sup>

Legally all the candidates should follow the provisions of the RMCF. Failure to observe these is an offence,<sup>499</sup> but the RMCF does not include any form of fine or sanction for those who fail to observe its provisions.

**Score: 75**

### **6.2.2 Transparency (practice) – To what extent are reports and decisions of the electoral management body made public in practice?**

The recently held elections have been mostly transparent, and all the required documents and decisions on election activities are available for public consumption. On the negative side, the IEC does not have an online system of voter registration, which is an important mechanism to determine people's eligibility to vote and to avoid registration fraud.

The IEC has a website, which is updated on a regular basis. The website seems quite informative and the public can easily access it in order to obtain various information about the IEC, including press conferences, meetings, voter lists, candidate lists, campaign expenses of the candidates, IEC decisions, media monitoring reports, etc.

Moreover, the IEC schedule of operations is also made public in advance; the schedule contains the election date, candidate nomination, election registration date, campaign period, counting of votes and results announcements, among others.<sup>500</sup> The IEC has a media department and the press conferences are organised as needed on the new issues and decisions of the IEC. The conferences are broadcasted in the media at the local, national and regional levels. The press conference sessions are open for participation to the media, observers (domestic and international) and candidate representatives.<sup>501</sup> The IEC has a five-year Strategic Plan for the Independent Election Commission of Afghanistan (2011–2016), which covers the IEC's achievements and challenges, management of information, organisational structure, budget, reforms in the electoral system and other relevant important issues.<sup>502</sup>

The media, civil society and observers have played a significant role in strengthening the transparency of IEC activities. Sometimes the IEC expressed animosity towards the observers and sometimes the observers were not allowed to be inside some of the polling stations for observation.<sup>503</sup> There are some cases where observers were not permitted to enter the polling stations. The FEFA found 176 cases where observers were denied entry to polling stations by IEC staff, police and security forces.<sup>504</sup> This undermined the IEC's transparency principle on the one hand and the credibility of the election on the other.

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<sup>498</sup> Independent Election Commission, "Regulation on Managing Campaign Finance during 2014 Presidential and Provincial Council Elections", (2013): Article 12(1–2).

<sup>499</sup> IEC, "2014 Presidential Elections", 2013: Article 13.

<sup>500</sup> Independent Election Commission, "Timeline," Independent Election Commission," [www.iec.org.af/2012-05-29-07-06-38/timeline](http://www.iec.org.af/2012-05-29-07-06-38/timeline) (accessed on 28 April 2015).

<sup>501</sup> Interview with a senior staff member of IEC, name withheld on request, IEC, Kabul, 29 April 2015.

<sup>502</sup> Independent Election Commission, "Strategic Plan of the Independent Election Commission of Afghanistan," Independent Election Commission (n.d).

<sup>503</sup> Heath Druzin, "Afghans largely left to monitor their own election," Stars and Stripes, [www.stripes.com/news/afghans-largely-left-to-monitor-their-own-election-1.276009](http://www.stripes.com/news/afghans-largely-left-to-monitor-their-own-election-1.276009) (accessed on 29 April 2015).

<sup>504</sup> Free and Fair Election Forum of Afghanistan, "Presidential Runoff Preliminary Report," Free and Fair Election Forum of Afghanistan (2014): 3.

To promote awareness and the spread of information on the electoral process, the IEC established its call centre in July 2013 with the contact number 190. The public can receive information on the electoral process free of charge eight hours a day.<sup>505</sup>

**Score: 50**

**6.2.3 Accountability (law) – To what extent are there provisions in place to ensure that the IEC has to report and be answerable for its actions?**

There are provisions in the Electoral Law, which mandate that the IEC report to the public and be accountable for its actions, but the provisions lack information on the structure and contents of reports. The Electoral Law is also silent on when to prepare and to whom to submit the IEC financial report.

The IEC is responsible for establishing relations and maintaining cooperation with the stakeholders related to election decisions.<sup>506</sup> The IEC Strategic Plan has adequately defined the IEC relationships with the stakeholders for consultation in important election issues. These stakeholders, among others, include the National Assembly, media, political parties, civil society representatives, government departments and donors.<sup>507</sup> Relations with these stakeholders help the IEC to make concrete election decisions. The legal framework, however, does not include any provisions for a timely and enforceable review of IEC decisions.

The IEC is required to prepare and publish reports on its activities in its website or through the public media, especially about candidate lists, voter lists, the delimitation of constituency boundaries and the media monitoring report to inform the public. According to the IEC Strategic Plan, the IEC is also required to archive its daily activities and the Election Education Centre has the responsibility to preserve and file all information on electoral processes.<sup>508</sup> Both the Election Law and the IEC Strategic Plan are silent about the content and depth of IEC reports. Any disputes and complaints made by the candidates against electoral irregularities are investigated and redressed by the IEC and the IECC.<sup>509</sup>

The SAO is responsible for auditing all government and semi-government organisations, which include the IEC's financial expenditure.<sup>510</sup> The Election Law, as well as the policy and strategy documents of the IEC are silent about presenting the IEC financial report to any government institution. However, according to Amarkhail, former CEO of the IEC, the commission submits its annual financial report to the Ministry of Finance.<sup>511</sup> The accounting mechanisms for discrepancies in financial activities of the IEC are also not discussed in the IEC legal documents.

**Score: 25**

**6.2.4 Accountability (practice) – To what extent does the EMB have to report and be answerable for its actions in practice?**

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<sup>505</sup> Independent Election Commission, "On commencement of Call Center," Independent Election Commission, [www.iec.org.af/vr-registration/vr-pressr/184-call-center](http://www.iec.org.af/vr-registration/vr-pressr/184-call-center) (accessed on 29 April 2015).

<sup>506</sup> MoJ, "Independent Election Commission", 2013: Article 14(10).

<sup>507</sup> Independent Election Commission, "Strategic Plan of the Independent Election Commission of Afghanistan 2011–2016", Independent Election Commission (n.d): 30.

<sup>508</sup> Independent Election Commission, "Strategic Plan of the Independent Election Commission of Afghanistan 2011–2016", 57–58.

<sup>509</sup> MoJ, "Independent Election Commission", 2013: Article 2(2).

<sup>510</sup> Ministry of Justice, "Audit High Administrative Law", Official Gazette 1101 (1392AH [2013]): Article 5(6).

<sup>511</sup> Interview with Zia-ul-Haq Amarkhail.

The IEC is responsible for filing the required reports covering election issues. The Quarterly Elections Report discusses the achievements and challenges of the IEC and offers recommendations.<sup>512</sup> The IEC Media Commission is responsible for preparing media monitoring reports. Media monitoring reports present statistics about the amount of time/space allocated to each candidate and their campaign teams in different programmes, while also containing presidential debates.<sup>513</sup> Moreover, the IEC organises press conferences about critical election issues. The IEC is also responsible for filing reports about its activities. The reports cover the issue of voter registration, election, voting and audit results, among others.<sup>514</sup> The reports filed by the IEC are concise, contain adequate information and are of adequate quality. The reports are available on the IEC website for public access and they also give enough scope to oversee IEC activities.

During the election period, the IEC spokesperson updates the public on a regular basis about the delays, decisions and vote-counting process, as well as election and audit results. Meetings with the stakeholders are held as needed to decide on agreements and/or answer their queries. On 1 June 2014, the IEC hosted a stakeholder meeting with the participation of national and international observers<sup>515</sup> to arrive at a decision to allow the stakeholders to observe the process of tallying and certification of voting results.

According to the law, even though both the IEC and the IECC are obligated to deal with complaints, in practice, only the IECC deals with them. In the 2014 elections, candidates registered a total of 2558 complaints about election fraud in the second round with the IECC. Of these, 664 complaints were registered against Abdullah's team and 573 were registered against Ghani's team, and the remaining complaints were made against the IEC and government officials.<sup>516</sup> However, the IECC failed to adjudicate all the complaints proficiently, mainly due to the recounting of both the first and the second round of voting.<sup>517</sup> The provincial and presidential candidates criticised the IECC for not being transparent and accountable. Some of the provincial candidates, whose votes were recounted, criticised the IECC, because their number of votes was decreased without a justifiable explanation.<sup>518</sup> Their arguments were not heard and their concerns were not addressed. The presidential candidates also criticised the IECC for not effectively resolving the complaints, not making decisions publicly and not sharing decisions about the complaints in a timely manner.<sup>519</sup>

The candidates who were found to have violated campaign rules were charged cash fines. In the first round of the presidential election, the IECC fined one candidate AFN 200,000 (US\$3508), because he had used government facilities in his presidential campaign; another one was fined AFN 100,000 (US\$1754) for insulting a candidate in his campaign.<sup>520</sup> Compared with the first round, in the second round of elections, cases of cash fines increased. In the second round, out of the total

<sup>512</sup> Independent Election Commission, "Quarterly Elections," Independent Election Commission (2015).

<sup>513</sup> Independent Election Commission, "Media Monitoring Project Afghanistan First Weekly Narrative Report", Independent Election Commission (2014): 1–5.

<sup>514</sup> Independent Election Commission, "Fact Sheets 2014", Independent Election Commission, [www.iec.org.af/2012-05-29-07-06-38/fag](http://www.iec.org.af/2012-05-29-07-06-38/fag) (accessed on 1 May 2015).

<sup>515</sup> Office for Democratic Institutions and Human Rights, "Presidential and Provincial Council Elections", Office for Democratic Institutions and Human Rights (2014): 22.

<sup>516</sup> European Union, "European Union Election Assessment Team", European Union (2014): 27.

<sup>517</sup> Qayoom Suroush and Martine van Biljert, "Elections 2014 (24): The IECC's performance addressing provincial council complaints", Afghan Analyst Network, [www.afghanistan-analysts.org/elections-2014-24-the-ieccs-performance-addressing-provincial-council-complaints/](http://www.afghanistan-analysts.org/elections-2014-24-the-ieccs-performance-addressing-provincial-council-complaints/) (accessed 30 April 2015).

<sup>518</sup> Suroush and van Biljert (accessed on 30 April 2015).

<sup>519</sup> Qayoom Suroush, "2014 Elections (21): A closer look at the IECC's performance and the challenges it faced", Afghan Analyst Network, [www.afghanistan-analysts.org/2014-elections-21-a-closer-look-at-the-iecc-its-performance-and-the-challenges-faced/](http://www.afghanistan-analysts.org/2014-elections-21-a-closer-look-at-the-iecc-its-performance-and-the-challenges-faced/) (accessed on 30 April 2015).

<sup>520</sup> Tolo News, "ECC Fines Candidates For Campaign Violations", Tolo News, [m.elections.tolonews.com/ecc-fines-candidates-campaign-violations](http://m.elections.tolonews.com/ecc-fines-candidates-campaign-violations) (accessed on 1 May 2015).

2558 complaints, fines were issued in 27 cases.<sup>521</sup> However, in its third round of complaints adjudication, the IECC rushed over the complaints and did not adequately deal with them.<sup>522</sup>

**Score: 75**

#### **6.2.5 Integrity (law) – To what extent are there mechanisms in place to ensure the integrity of the electoral management body?**

There are mechanisms that ensure the integrity of the IEC. The IEC code of conduct covers important issues, which enhance IEC integrity, but it lacks rules on post-employment restrictions and hospitality. The IEC requires every employee to sign this code upon entering employment. The code of conduct covers issues of staff attitude, preservation of impartiality, respect for legal rights, commitment to assigned duties, conflicts of interest and the principle of non-affiliation in political parties. Moreover, in performing their duties, IEC employees are expected to adhere to the principles of transparency in all electoral processes based on the existing legal standards. It is expected that the IEC staff maintain the integrity of all electoral processes and provide quality service to voters and other stakeholders.

According to the code of conduct, IEC employees are not allowed to give or receive money, gifts or any other illegal benefits from stakeholders.<sup>523</sup> Government officials are not allowed to introduce individuals to be appointed as temporary or permanent staff at the IEC. IEC staff members are not allowed to use their position to strengthen or weaken a certain candidate's position.<sup>524</sup> It is worth mentioning that before starting their service, members of the IEC take an oath of independence, impartiality, and honesty in the presence of the President and the presidents of both Jirga's (houses) of the National Assembly.<sup>525</sup>

The IEC code of conduct and the Electoral Law are silent about post-employment restrictions of IEC staff. However, according to Presidential Decree No. 23 of January 2005 on the Structure and Working Procedure of the IEC, "members of the Independent Election Commission, while maintaining their material rights, cannot, for a period of one year, be appointed to top official positions, with exception of academic and research ones."<sup>526</sup>

**Score: 25**

#### **6.2.6 Integrity (practice) – To what extent is the integrity of the electoral management body ensured in practice?**

During the 2014 presidential and provincial elections, the IEC dismissed around 10,000 employees who were allegedly accused of violating the code of conduct (see independence practice section). According to a senior IEC employee, cases of violations included conflict of interests and receiving

<sup>521</sup> European Union, "European Union Election Assessment Team", European Union (2014): 27.

<sup>522</sup> Qayoom Suroush, "Elections (40): The IECC open sessions on Election Day complaints", Afghan Analyst Network, [www.afghanistan-analysts.org/elections-40-the-iecc-open-sessions-on-the-election-day-complaints/](http://www.afghanistan-analysts.org/elections-40-the-iecc-open-sessions-on-the-election-day-complaints/) (accessed on 1 May 2015).

<sup>523</sup> Independent Elections Commission of Afghanistan, "Code of Conduct for Electoral Staff", Independent Election Commission of Afghanistan (n.d): 1, [www.iec.org.af/pdf/code\\_of\\_conduct/2014/code\\_of\\_conduct\\_electoral\\_staff\\_eng.pdf](http://www.iec.org.af/pdf/code_of_conduct/2014/code_of_conduct_electoral_staff_eng.pdf) (accessed on 1 May 2015).

<sup>524</sup> Presidential Decree, "On non-interference of government officials in 2014 run-off presidential election process", Independent Election Commission (n.d): Article 1(6), [www.iec.org.af/pdf/legalframework/law/decrees\\_on\\_runoff\\_government\\_staff\\_eng.pdf](http://www.iec.org.af/pdf/legalframework/law/decrees_on_runoff_government_staff_eng.pdf) (accessed on 2 May 2015).

<sup>525</sup> MoJ, "Independent Election Commission", 2013: Article 9.

<sup>526</sup> Presidential Decree, "The Structure and Working Procedure of the Independent Election Commission," Independent Election Commission, Decree No 23 (2005): Article 6, [www.iec.org.af/pdf/legalframework/law/decrees\\_on\\_working\\_procedure\\_iec.pdf](http://www.iec.org.af/pdf/legalframework/law/decrees_on_working_procedure_iec.pdf) (accessed on 2 May 2015).

gifts and money from provincial and presidential candidates to work in their favour.<sup>527</sup> Staff members who violated the code of conduct were blacklisted by the IEC. However, due to a lack of solid evidence, none of them were prosecuted.<sup>528</sup>

It is worth mentioning that the dismissed employees were temporary IEC staff, whose contracts were to expire after election day. Throughout the elections, the IEC was able to produce evidence against three permanent staff members, who were eventually dismissed (see independence practice section).

According to the EU's election assessment, the IEC never took any serious action against the IEC staff, nor did it order any investigation, even when faced with candidates' allegations against IEC staff.<sup>529</sup> There were allegations by provincial candidates about the IEC staff, who allegedly asked them for money to place their name in the winners' list. For example, a provincial candidate from Takhar province said that he had received phone calls from IEC staff asking for up to US\$10,000 to include him in the list of winners. In Baghlan, the price of becoming a provincial councillor was initially US\$15,000 but later went up to US\$30,000. The price was set by IEC staff members.<sup>530</sup>

## **6.3 ROLE**

**Score: 50**

### **6.3.1 Campaign regulation (law and practice) – Does the electoral management body effectively regulate candidate and political party finance?**

The IEC has rules about how to regulate candidates' finances, but due to current political circumstances in the country, in practice, this has proved difficult. The IEC has a set ceiling for campaign expenses. A candidate is not allowed to spend more than AFN 10,000,000 (US\$175,438) in presidential elections and AFN 500,000 (US\$8772) in provincial council elections.<sup>531</sup>

The RMCF was adopted by the IEC in 2013 to better manage candidates' finances in the 2014 presidential and provincial council elections. These regulations cover limits on electoral expenses, campaign contributions, records of campaign contributions and expenses, campaign bank accounts of presidential candidates and reports on contributions and expenses.<sup>532</sup> After scrutiny, the submitted financial campaign expenses are disclosed on the IEC website for public information. However, the RMCF does not elaborate who is responsible for auditing the expenses of presidential candidates. On the other hand, the Regulation on Media Activities during Elections is silent about the amount a presidential candidate can spend on media.

Based on documents and data submitted to the IEC, it has publically announced that no presidential candidate has gone over the ceiling of financial expenses, but there are allegations that teams hid and did not report all their expenses to the IEC.<sup>533</sup> Transactions through the banking system were imposed by the IEC to be used by the candidates to determine the amount the candidate received as contributions and the amount they spend. According to the Financial Expenses Report, in most

<sup>527</sup> Interview with a senior staff of the IEC, name withheld on request, IEC, Kabul, 29 April 2015.

<sup>528</sup> European Union, "European Union Election Assessment Team", European Union (2014): 12.

<sup>529</sup> EU, "European Union Election Assessment Team", 2014: 12.

<sup>530</sup> Suroush and van Biljert (accessed on 2 May 2015).

<sup>531</sup> IEC, "2014 Presidential Elections", 2013: Article 3.

<sup>532</sup> IEC, "2014 Presidential Elections", 2013: 2–6.

<sup>533</sup> Independent Election Commission, "2014 Presidential and Provincial Council Candidates Campaign Financial Management and Reporting System," Independent Election Commission (2014).

cases, the bank system is not used by the candidates and without the public and civil society groups' support, the IEC will not be able to verify candidates' campaign expenses accurately.<sup>534</sup>

The media was required to report to the IEC about the amount of money they received from a candidate, and how the media covered the electoral activities and campaign messages.<sup>535</sup> However, the media failed to submit its financial reports to IEC on income from candidates' advertisements and campaigns.<sup>536</sup>

**Score: 25**

### **6.3.2 Election administration (practice) – Does the IEC ensure the integrity of the electoral process?**

The IEC's administration of the electoral process during the last election was not efficient and effective. The IEC also launched public outreach programmes and thousands of observers were involved in monitoring the election proceedings. Despite these efforts, there were many irregularities.

Through its public outreach and civic education programme, the IEC was able to ensure that in secure areas eligible voters, including first-time voters, women and minorities, would register to vote and know where and how to vote.<sup>537</sup> The programme was applied in two ways: first, the IEC public outreach programme provided information and distributed brochures to the eligible voters in secure and accessible areas. Second, TV and radio programmes and advertisements were created to raise awareness in the public and educate it on the methods and importance of voting. Opportunities were given to the voters to check if their names were registered correctly. The voters' education programmes were overseen by the IEC.<sup>538</sup>

During the elections, domestic and international observers were allowed to observe all the stages of election from polling, counting and auditing to the result announcement. A total of 18,000 observers throughout the country were involved in observing the elections. Most observers reported that they were able to access stations and observe polling activities without any challenge. However, the FEFA report indicates that FEFA observers were threatened in Logar, Nimruz and Kandahar.<sup>539</sup>

According to Democracy International's observation report, the electoral materials, i.e., ballots, seals and tally sheets, were tamper-proofed and accounted for. The domestic observers reported a high turnout, as well as some voting irregularities, such as a shortage of ballot sheets.<sup>540</sup> The shortage of ballot papers was one of the main problems on election day. Throughout the country there were around 6000 polling stations during the 2014 elections. According to the FEFA observation report, 368 polling stations faced ballot paper shortages, particularly in Kabul, Herat, Khost, Samangan, Kandahar and Ghazni. Of this number, 217 polling stations ran out of ballot papers before noon.<sup>541</sup>

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<sup>534</sup> IEC, 2014: 2–9.

<sup>535</sup> Independent Election Commission, "Regulation on Media Activities during Elections," Independent Election Commission (2013): Article 8.

<sup>536</sup> European Union, "European Union Election Assessment Team," European Union (2014): 18.

<sup>537</sup> Interview with Awal Rahman Roodwal.

<sup>538</sup> Interview with a senior staff member of the IEC, name withheld on request, IEC, Kabul, 29 April 2015.

<sup>539</sup> Free and Fair Election Forum of Afghanistan, "2014 Elections Observations Report," Free and Fair Election Forum of Afghanistan (2014): 4–5.

<sup>540</sup> Democracy International, "Afghanistan Election Observation Mission 2014 Final Report," Democracy International (2015): 22–24.

<sup>541</sup> Free and Fair Election Forum of Afghanistan, "Presidential Runoff Preliminary Report," Free and Fair Election Forum of Afghanistan (2014): 4.

Consequently, some voters could not vote and the candidates submitted their complaints to IECC. Moreover, 10 percent of the polling stations did not open for security reasons.<sup>542</sup>

Considering the high level of interference in the election process, improper adjudication of the registered complaints by the IECC and violation of the code of conduct by IEC staff, the IEC was not able to account for and aggregate the election results accurately and efficiently.

**Recommendations:**

- Change the electoral system from the single non-transferable vote to proportional representation.
- Enforce and ensure the impartiality, independence and performance of the IEC by creating stronger laws and public oversight.
- The IEC should ensure that allegations of corruption offences and electoral fraud by permanent IEC staff are investigated, and that relevant cases are forwarded to the Attorney General for further action.

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<sup>542</sup> Rob Crilly, "Afghan election: peaceful vote deals blow to Taliban," The Telegraph, [www.telegraph.co.uk/news/worldnews/asia/afghanistan/10747958/Afghan-election-peaceful-vote-deals-blow-to-Taliban.html](http://www.telegraph.co.uk/news/worldnews/asia/afghanistan/10747958/Afghan-election-peaceful-vote-deals-blow-to-Taliban.html) (accessed on 3 May 2015).



## 7. THE SUPREME AUDIT OFFICE

### Summary

The SAO is the major audit institution in Afghanistan responsible for overseeing and auditing the financial activities of the government, government-funded organisations and public–private partnerships. The purpose of the SAO is to enhance fiscal transparency and public accountability in government operations.

The assessment shows that SAO is the strongest pillar of Afghanistan's National Integrity System. Its overall performance has improved over recent years, mainly due to some increases in financial, human and physical resources. Despite this improvement, the lack of skilled and professional staff, advanced technical resources for data analysis, sufficient budget and the non-existence of regional offices, except Nangarhar and Balkh, remain major obstacles to its effectiveness.

The SAO website contains important information about its activities. The public can access information about audit reports and the SAO's activities. The SAO prepares and submits all required audit reports to the President and Wolesi Jirga on an annual basis.

### Structure and organisation

The SAO is an independent and non-partisan institution responsible for controlling and auditing the financial and accounting activities of all government and semi-government organisations at the central and provincial levels. In its current structure, the SAO has two deputies (Operations Deputy and Admin and Finance Deputy) and seven directorates. The Auditor General is selected by the President and the deputies are recommended to the President by the Auditor General for approval.<sup>543</sup>

The SAO is a member of the International Organisation of Supreme Audit Institutions (INTOSAI). Therefore, it is committed to follow international auditing standards and practices to bring improvements in financial management of the government.<sup>544</sup> The new Audit High Administration Law (AHAL) of 2013, providing opportunities for the SAO's liaison to strengthen relations with the Finance and Budget Committee of the Parliament. In addition to its Head Quarter in Kabul, the SAO presently has two regional offices, one in Nangarhar and the second one in Balkh. It is planning to open regional offices in Kandahar and Herat.<sup>545</sup>

### Assessment

#### 7.1 CAPACITY

**Score: 50**

##### 7.1.1 Resources (practice) – To what extent does the audit institution have adequate resources to achieve its goals in practice?

The financial, physical, technical and human resources of the SAO have increased in recent years, but it still lacks sufficient resources at the regional level and professional human resources at the central office to achieve its goals in practice.

<sup>543</sup> MoJ, "Audit High Administration Law", 2013: Article 7(1–2).

<sup>544</sup> Supreme Audit Office, "Strategic Plan 2013–2017", Supreme Audit Office (n.d): 7.

<sup>545</sup> Supreme Audit Office, "Strategic Plan 2013–2017", Supreme Audit Office (n.d): 6.

The SAO receives its budget through Ministry of Finance. The government has steadily increased the SAO budget over the past few years. The SAO budget of AFN 5.133 billion (US\$9 million) in 2012/2013 (1392) was increased to AFN 7.209 billion (US\$12.64 million) in 1993 (2013/2014).<sup>546</sup> Due to the international community's aid reduction, the majority of government institutions' annual budgets declined in 2014/2015 (1394). Despite this fact, the SAO was one of the few government entities, which received 30 per cent more money in 1394 (AFN 9.338 billion [US\$16.28 million]) compared to the 1393 budget.<sup>547</sup> According to the Deputy Auditor General, the budget is still not enough, however, and the SAO is not able to perform its duties at regional levels. He stated that "if we had sufficient funds, all our regional/zonal offices would already have been built."<sup>548</sup>

In 2010, Special Inspector General for Afghanistan Reconstruction (SIGAR) reported that the SAO had a high staff turnover, mainly due to low salaries and quality of internal infrastructure.<sup>549</sup> Presently, these problems have been addressed to some extent. In 2012, a new building for the SAO was built in Kabul for a price tag of AFN 189 million (US\$3.3 million). The new building is equipped with computers, internet facilities, computer labs and a large library.<sup>550</sup> In addition to the technical improvements and physical resources at the central level, the salaries of 61 employees were increased five to seven fold under the "Super Scale Salary" structure for civil servants,<sup>551</sup> and the number of employees also increased from 435 in 2013<sup>552</sup> to 465 in 2014.<sup>553</sup>

Despite the increase in the number of employees, the SAO still lacks professional and expert staff in the field of auditing and accounting. To help overcome these and other shortcomings, USAID introduced 30 female trainees to the SAO.<sup>554</sup> Furthermore, to fill this gap, the SAO also offers career development and short training courses for its staff within and outside the country. The SAO and some institutions in the Ministry of Finance organised workshops, which were funded by Department for International Development (DFID).<sup>555</sup>

In 2013, 174 training courses were held by the SAO. The trainings were mainly focusing on methods of compliance audit, performance audit, financial and technical audit, INTOSAI standards, English language and computer skills, among others.<sup>556</sup> According to the Plan and Policy Director of the SAO the trainings do not seem to be enough and staff should undergo more training in the field of auditing.<sup>557</sup> It is worth mentioning that in 2012, for the first time, the SAO, with the help of its foreign

<sup>546</sup> MoF, "1393 National Budget", 2014: 41.

<sup>547</sup> MoF, "1394 National Budget", 2015: 60.

<sup>548</sup> Interview with Sayed Mahdi Hussaini, Technical Deputy of Supreme Audit Office, Supreme Audit Office, Kabul, 5 April 2015.

<sup>549</sup> Special Inspector General for Afghanistan Reconstruction, "Afghanistan's Control and Audit Office Requires Operational and Budgetary Independence, Enhanced Authority, and Focused International Assistance to Effectively Prevent and Detect Corruption", SIGAR (2010): 11.

<sup>550</sup> Supreme Audit Office, "Quarterly Report", Supreme Audit Office (1393AH [2012]): 26–28.

<sup>551</sup> Supreme Audit Office, "Quarterly Report", Supreme Audit Office (2013): 17.

<sup>552</sup> Supreme Audit Institution, "Organizational Structure," Supreme Audit Institution, <http://sao.gov.af/Content/files/organisation%20chart.pdf> (accessed on 23 March 2015).

<sup>553</sup> Supreme Audit Office, "Professional Audit Training Program for Auditors of the Supreme Audit Office," Supreme Audit Office, <http://sao.gov.af/en/news/38975> (accessed on 24 March 2015).

<sup>554</sup> Supreme Audit Office, "USAID Introduce 30 Female Trainees to Supreme Audit Office (SAO)", <http://demo.afghanistan.af/en/news/usaaid-introduce-30-female-trainees-to-supreme-audit-office-sao> (accessed 20 August 2015).

<sup>555</sup> Ministry of Finance, "Ministry of Finance launches the Second roadmap of Public Financial Management," <http://mof.gov.af/en/news/second-roadmap-of-public-financial-management-was-launched> (accessed on 20 August 2015).

<sup>556</sup> Supreme Audit Office, "Professional Audit Training Programs, English and Computer for Capacity Building of Auditors," Supreme Audit Office, <http://sao.gov.af/Content/files/برنامه های آموزشی سال های.pdf> (accessed on 25 March 2015).

<sup>557</sup> Interview with Ghulam Sarwar Hasheme, Director of Plan and Policy, Supreme Audit Office, Kabul, 7 April 2015.

advisors, began in-house special professional auditing courses (e.g. performance auditing, environmental auditing) for its staff.<sup>558</sup>

**Score: 75**

### **7.1.2 Independence (law) – To what extent is there formal operational independence of the audit institution?**

The AHAL contains important provisions, which support the independence of the SAO, but the law is silent on criteria for the reappointment of the Auditor General and work experience requirements for auditors.

As the only external audit institution of the government, the SAO has the independence and authority to perform its activities. This is established based on Articles 50, 75 and 98 of the Constitution.<sup>559</sup> The independence and neutrality of the SAO are enshrined in AHAL.<sup>560</sup> It has the responsibility to audit all budgetary units, including that of the President's Office, the Legislative, the AGO, independent commissions, ministries, municipalities and public-private partnership organisations at the national and local levels.<sup>561</sup> In the Constitution, no specific relation has been laid out between the SAO and the legislature.

The SAO has full authority to audit government organisations without any political influence and pressure from any government institutions. Once the audit is completed by the SAO and is declared as final, other government organisations do not have the right to re-audit, except when the President orders it.<sup>562</sup> The SAO is a member of INTOSAI; therefore, it carries out the quality of audits according to standard and effective methods and the practices of the International Standards for Supreme Audit Institutions.<sup>563</sup> The use of these audit methods renders the audit reports of the SAO more credible with its stakeholders (the President, Wolesi Jirga, donors, the Ministry of Finance, civil society and media).

According to the law, recruitment at the SAO is based on clear professional criteria. For instance, persons selected as the head of the SAO and the deputy shall have a bachelor degree, work experience of at least five years in finance and accounting, and must not have been convicted of crime or corruption. Moreover, the head and the deputy of the SAO are prohibited from being members of a political party at the time of their service.<sup>564</sup> To be selected as an ordinary auditor, neither the requirement of work experience, nor providing professional training is mentioned in the AHAL, but all the other above-mentioned requirements mentioned apply.<sup>565</sup>

According to the AHAL, the head of the SAO is appointed for a six-year term by the President,<sup>566</sup> which ensures the Auditor General's independence, compared to appointment by the Parliament. The law is silent on the reappointment of the Auditor General, therefore, he/she can be reappointed for a second term or more. According to the AHAL, the head of the SAO and its deputies can be dismissed from their jobs, if they have membership in a political party, give incorrect information about auditing, and do not perform their duty in a timely manner and according to AHAL rules and

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<sup>558</sup> Supreme Audit Office, "Quarterly Report", Supreme Audit Office (2013): 10.

<sup>559</sup> Audit High Administration Law. Official Gazette, No 1101 (1392[2013]): Article 1.

<sup>560</sup> MoJ, "Audit High Administration Law", 2013: Article 4.

<sup>561</sup> MoJ, "Audit High Administration Law", 2013: Article 5.

<sup>562</sup> MoJ, "Audit High Administration Law", 2013: Article 20.

<sup>563</sup> Supreme Audit Office, "Strategic Plan 2013–2017," Supreme Audit Office (n.d): 13.

<sup>564</sup> MoJ, "Audit High Administration Law", 2013: Article 6(1).

<sup>565</sup> MoJ, "Audit High Administration Law", 2013: Article 6(2).

<sup>566</sup> MoJ, "Audit High Administration Law", 2013: Article 7 (1).

regulations.<sup>567</sup> Auditors can be legally prosecuted if they do not implement the provisions of legislative decrees, hide activities against the provisions of the legislative decrees, do not report suspicious and lost documents, hide or destroy documents for possible misuse, or forge auditing documents.<sup>568</sup>

**Score: 75**

### **7.1.3 Independence (practice) – To what extent is the audit institution free from external interference in the performance of its work in practice?**

In spite of the unstable political situation in Afghanistan, SAO operates in a non-partisan manner and has kept its independence and neutrality in the performance of its work in practice. Neither internal nor external interference examples have been documented on director/staff appointments or political interventions with SAO daily activities. Neither have there been any documented cases of SAO head/deputies/directors/members engaging in any political party or other types of activities, which are restricted by the AHAL or holding positions that could compromise their independence and neutrality.

The National Unity Government has publicly given political support to the independence of the SAO. In 2015, the Second Vice-President Sarwar Danish said, “auditing and monitoring rights only goes to the Supreme audit office of Afghanistan and officials in the following institutions should pursue the issues observing the impartiality and independency.”<sup>569</sup>

According to an SAO auditor, the government officials do not interfere with, and halt auditors’ activities, because auditing is conducted based on an agreement with the internal audit units of each government institution and the SAO. The same interviewee also stated that some of the government staff still feel uneasy regarding multiple auditing, because the internal audit of each of the government organisations audits the respective institution prior to the SAO audit.<sup>570</sup> The HOOAC is also reported to have audited government institutions. “In 1393AH (2014/15), the SAO undertook audit of 43 projects financed by the World Bank grants as per the audit plan and the reports were submitted to the relevant authorities.”<sup>571</sup>

In its commitment to the UN Convention against Corruption the SAO undertakes financial accountability assessment of all government institutions. “The SAO conducts an annual Institutional Risk Analysis (IRA) of government institutions in the last quarter of the fiscal year, from which it categorizes institutions into High, Medium and Low Risk categories based on best practices from the International Organisation of Supreme Audit Institutions (INTOSAI).”<sup>572</sup>

According to Hussaini, the Technical Deputy of the SAO, since the establishment of the National Unity Government in September 2014, the problem of multiple auditing of the government institutions has been solved and now only the internal audit unit of each government institution and the SAO are required to perform auditing.<sup>573</sup>

<sup>567</sup> MoJ, “Audit High Administration Law”, 2013: Article 8.

<sup>568</sup> MoJ, “Audit High Administration Law”, 2013: Article 22.

<sup>569</sup> Nimatullah Ahmadi, “Parliament Should Take Budgeting Consumption as Serious: Supreme Audit Office”, Ariana News, <http://ariananews.af/latest-news/parliament-should-take-budgeting-consumption-as-serious-supreme-audit-office/> (accessed on 25 March 2015).

<sup>570</sup> Interview with Hayatullah, Performance Auditor, Supreme Audit Office, Kabul, 8 April 2015.

<sup>571</sup> Supreme Audit Office, “Professional Audit Training Program for Auditors of the Supreme Audit Office”, <http://sao.gov.af/en/news/38975> (accessed on 20 August 2015).

<sup>572</sup> National Transparency and Accountability Program, “National priority Program (NPP) 2”, 40.

<sup>573</sup> Interview with Sayed Mahdi Hussaini.

The job duration of the Auditor General is six years without restriction on reappointment. The current Auditor General has headed the SAO since 2003. His first term ended in 2009, but for his performance and achievements, President Karzai reappointed him in 2009 for the second term.<sup>574</sup>

Except for the Auditor General, all other members and SAO staff are civil servants. Even though civil servants have a permanent position, they can be removed from their jobs, if they break the law. To date, no senior staff members have been removed from their jobs, although every year around two to three junior staff members are fired.<sup>575</sup>

## 7.2 GOVERNANCE

Score: 75

### 7.2.1 Transparency (law) – To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the SAO?

The AHAL contains a number of provisions about the transparency of SAO. However, it still is silent about the preparation and publication of compliance audit reports and the discussion mechanisms of the audit reports with the Wolesi Jirga's Finance and Budget Committee.

The SAO is legally required to prepare and submit several reports to the President and Wolesi Jirga on an annual basis and upon request. For instance, the audit report on a Qatia account (financial statement) should be submitted to the President and Wolesi Jirga within six months (between April and September) after every fiscal year.<sup>576</sup> Additionally, the SAO is required to prepare and submit an annual audit report on revenues and expenditures of all government organisations. The Special Audit Report, Audit of Secret Expenditures and Audit of Performance shall be prepared and submitted to the President and Wolesi Jirga upon request at any time.<sup>577</sup>

To check and show the practical effectiveness of the rules and regulations, and income and expenditure in the government institutions, the SAO prepares a comprehensive compliance audit report. This report is submitted bi-annually to the President's Office and the Ministry of State of Parliamentary Affairs,<sup>578</sup> but not to the Parliament for discussion.

Wolesi Jirga's Finance and Budget Committee only discusses the audit report of Qatia statements for improving the financial management of government organisations. After reviewing the audit report, the Finance and Budget Committee may ask the SAO to explain and discuss the audit report results, provide input and make recommendations. The SAO considers these in its subsequent audit on Qatia report.<sup>579</sup> The AHAL and the SAO's policies and strategies lack mechanisms and methods regarding audit report discussions with Wolesi Jirga's Finance and Budget Committee.

Once the annual audit report on a Qatia financial statement is approved by the President and Wolesi Jirga, it is posted on the SAO's website. Legally two types of reports are not allowed to be published: special audit reports requested by the President or Wolesi Jirga, and audit reports on secret expenditures of government institutions.<sup>580</sup> The AHAL is silent about publishing the SAO's activity report. According to the AHAL regulations, the results of the SAO reports can be published

<sup>574</sup> Supreme Audit Office, "Quarterly Report" Supreme Audit Office (2013): 16.

<sup>575</sup> Interview with an employee of SAO, name withheld on request, Supreme Audit Office, Kabul, 8 April 2015.

<sup>576</sup> MoJ, "Audit High Administration Law", 2013: Article 12(1).

<sup>542</sup> MoJ, "Audit High Administration Law", 2013: Article 12.

<sup>578</sup> Supreme Audit Office, "Strategic Plan 2013–2017", Supreme Audit Office (n.d): 53.

<sup>579</sup> Supreme Audit Office, "Strategic Plan 2013–2017", Supreme Audit Office (n.d): 16.

<sup>580</sup> MoJ, "Audit High Administration Law", 2013: Article 9(6).

by the media after they are submitted to the President and Wolesi Jirga,<sup>581</sup> but no deadline is set by the law when to publish these.

**Score: 75**

**7.2.2 Transparency (practice) – To what extent is there transparency in the activities and decisions of the audit institution in practice?**

In practice, the SAO has taken a number of steps to ensure transparency in its activities, including the creation of its website that provides audit reports and important information on the SAO's activities to the public. Still, the SAO's budget implementation report is not available to the public and the report on the SAO's activities does not include enough details.

The SAO has a website that offers information on its activities. The website contains current news, organisational structure and training programmes. It also has a number of important reports including audit reports of Qatia financial statement, quarterly progress reports, and information on SAO working activities. The SAO prepares required reports, including the Qatia audit report, income and expenditure reports, and compliance audit reports, which are also submitted to the President and Wolesi Jirga. After approval by the President and Wolesi Jirga, the audit reports are posted on the SAO website for public access. Since the launching of the performance audit in 2013, no reports have been posted yet on the SAO's website.

The SAO audit report of Qatia contains the information on state budget implementation, but the SAO's own annual budget implementation information is not available to the public in order to know how and where it has implemented its budget. According to the Director of Plan and Policy, information not posted on the website is made available upon the request of individuals.<sup>582</sup>

The SAO activities report from 2003 (1382) to 2011 (1390), which are available on the SAO website, include the number of organisations being audited, the reasons why some budgetary units are not audited, the number of dossiers on fraud and corruption forwarded to the AGO for investigation,<sup>583</sup> and the number of staff trained on different courses.<sup>584</sup> On the negative side, the SAO activity report is too short to obtain enough data to evaluate the strengths and weaknesses of the SAO.

In addition to the SAO's activities and audit reports, the SAO also publishes its policy, strategic development plan, audit methods, audit guides and training schedule. People can access them easily from its website.

**Score: 50**

**7.2.3 Accountability (law) - To what extent are there provisions in place to ensure that the SAO has to report and be answerable for its actions?**

The AHAL contains provisions, which make the SAO accountable to the President, but the law is silent about submitting the SAO's activities report and its internal financial audit report to the President and Wolesi Jirga, or any other public agency.

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<sup>581</sup> MoJ, "Audit High Administration Law", 2013: Article 19.

<sup>582</sup> Interview with Ghulam Sarwar Hasheme.

<sup>583</sup> Supreme Audit Office, "Reports 1389," Supreme Audit Office, <http://sao.gov.af/fa/page/1568/3931> (accessed on 3 April 2015).

<sup>584</sup> Supreme Audit Office, "Reports 1388" Supreme Audit Office, <http://sao.gov.af/fa/page/1568/1570> (accessed on 3 April 2015).



The SAO is required to provide a “quality audit report and assurance on the financial activities and control of state resources and operation of public administration”<sup>585</sup> to the President, Wolesi Jirga, the Ministry of Finance, the donors, civil society and the media on an annual basis.

To ensure quality assurance within the SAO, it has its own Internal Audit and Quality Control Directorate (IAQCD). The IAQCD independently audits and controls the activities of the SAO under the mandate of the Auditor General.<sup>586</sup> The internal audit of the SAO’s financial management is conducted by IAQCD in accordance with the INTOSAI standards.<sup>587</sup> The law does not require independent auditing of the SAO by Finance and Budget Committee of the Wolesi Jirga or any other external entity. Similar to the submission of the SAO’s activity report, the AHAL is also silent about submitting the SAO’s internal financial audit report to Wolesi Jirga or any other entity.

The internal auditors of all government institutions are required to prepare their audit reports according to the SAO internal audit reporting format and policy. After analyses by the IAQCD, the results are returned to the respective institutions.<sup>588</sup> There is no legal provision to allow government entities, which are audited by the SAO, to challenge or re-audit the audit results, unless the President orders it.<sup>589</sup>

**Score: 50**

#### **7.2.4 Accountability (practice) – To what extent does the SAO have to report and be answerable for its actions in practice?**

The legal provisions are implemented effectively to ensure the accountability of the SAO, but the audit reports on financial statements are not well debated between the SAO and the Wolesi Jirga’s Finance and Budget Committee. The internal audit report of the SAO’s finances is also not submitted to the President and Wolesi Jirga.

The SAO is required to provide reports to the President and Wolesi Jirga.<sup>590</sup> All the annual reports from 2003–2011 of the SAO are posted on the SAO’s website, which discusses its progress and challenges.<sup>591</sup> According to the Deputy Auditor General, the SAO has an internal audit unit responsible for financial audits of SAO finances. The internal audit is conducted every year and peer-reviewed by external auditors. Last year’s internal audit report of the SAO’s finances was reviewed by auditors from India.<sup>592</sup>

The SAO submits the audit result on Qatia financial statements to the President and Wolesi Jirga on an annual basis, the most recent one in 2013. The report contained a financial statement for the “operating expenditure, development expenditure and revenue, and the statement of debit and credit of the Central Bank (Da Afghanistan Bank) and the position of payments by the Treasury Department of MoF”.<sup>593</sup>

Every year the SAO audits the budget of different government and semi-government organisations and the report is submitted to Wolesi Jirga. Wolesi Jirga’s head of the Finance and Budget Committee stated that 11 ministers did not spend half of their development budget in 2012.

<sup>585</sup> Supreme Audit Office, “Strategic Plan 2013–2017,” Supreme Audit Office (n.d): 9.

<sup>586</sup> Supreme Audit Office, “Internal Audit and Quality Control Directorate” Supreme Audit Office, <http://sao.gov.af/fa/page/1554/3901/3915> (accessed on 27 March 2015).

<sup>587</sup> MoJ, “Audit High Administration Law”, 2013: Article 18.

<sup>588</sup> Supreme Audit Office, “Audit Policy”, Supreme Audit Office (1390): 55.

<sup>589</sup> MoJ, “Audit High Administration Law”, 2013: Article 20.

<sup>590</sup> Supreme Audit Office, “Quarterly Report”, Supreme Audit Office (2012): 17.

<sup>591</sup> Supreme Audit Office, “Progress Report 1390”, Supreme Audit Office (2011):1–5.

<sup>592</sup> Interview with Sayed Mahdi Hussaini.

<sup>593</sup> Supreme Audit Office, “Audit Report on Qatia Accounts”, Supreme Audit Office (1392AH [2013]): Preface.



Therefore, in 2013 they were summoned based on the figures indicated in the audit report of Qatia. Later on, Wolesi Jirga found that the figures were inaccurately calculated by the SAO.<sup>594</sup> This is why the head of the Finance and Budget Committee criticised the SAO for not preparing the audit report accurately.<sup>595</sup>

The National Transparency and Accountability Report pointed out that Wolesi Jirga is not completely aware of how to discuss the audit reports. The report recommended that MPs undergo capacity-building in the area of finance and auditing in order to be able to evaluate the audit results.<sup>596</sup> In practice, the final results of the SAO audit reports cannot be challenged by any of the government agencies, because according to the Plan and Policy Director of the SAO, the final audit result is prepared after confirmation from every audited entity.<sup>597</sup>

**Score: 75**

### **7.2.5 Integrity mechanism (law) – To what extent are there mechanisms in place to ensure the integrity of the audit institution?**

There are provisions about the integrity of SAO staff in its strategy. Furthermore, the Code of Conduct of Civil Servants applies to SAO staff. However, neither the strategy nor the code of conduct for civil servants includes provisions on post-employment restriction and hospitality of the staff/employee.

The SAO has established a code of conduct for its employees based on the INTOSAI code of ethics and auditing standards.<sup>598</sup> This code of conduct, which is placed in the SAO's Strategic Plan of 2013–2017, is designed to ensure integrity and improve the values of neutrality and professional behaviour.<sup>599</sup>

According to the strategic plan, the SAO is committed to espouse the principles of integrity, independence and honesty in its audit activities. Furthermore, the SAO is committed to increasing transparency, as well as preventing conflicts of interest and corruption in its daily operations. Auditors are not allowed to conduct any unprofessional, misleading or fraudulent activities undermining the integrity of the SAO.<sup>600</sup>

According to Article 3 (2) of the AHAL, auditors are considered as civil servants.<sup>601</sup> Auditors should not be influenced by personal interests or use their official position for personal purposes. Furthermore, auditors are not allowed to disclose any kind of information obtained during auditing to a third party, except for the purpose of meeting the SAO's legal responsibilities.<sup>602</sup>

The auditors must avoid any relationship with the managers and staff of the audited units of government institutions. They must not use the services of audited units, which may influence or

<sup>594</sup> Gran Hewad and Thomas Ruttig, "Summoning the Ministers: parliament damages its own image", Afghan Analyst Network, [www.afghanistan-analysts.org/summoning-the-ministers-parliament-damages-its-own-image/](http://www.afghanistan-analysts.org/summoning-the-ministers-parliament-damages-its-own-image/) (accessed on 30 March 2015).

<sup>595</sup> Zenat Mohammadi, "Supreme Audit Office Criticizes House for Politicizing Government Financial Records," Tolo News, [www.tolonews.com/en/afghanistan/18408-supreme-audit-office-criticizes-house-for-politicizing-government-financial-records](http://www.tolonews.com/en/afghanistan/18408-supreme-audit-office-criticizes-house-for-politicizing-government-financial-records) (accessed on 29 March 2015).

<sup>596</sup> High Office of Oversight and Anti-Corruption, "National Priority Program 2: National Transparency and Accountability Program, High Office of Oversight and Anti-Corruption (2011): 48.

<sup>597</sup> Interview with Ghulam Sarwar Hasheme.

<sup>598</sup> Inga-Britt Ahlenius, "Code of Ethics and Auditing Standards" International Organization of Supreme Audit Institutions, <http://sao.gov.af/Content/files/INTOSAI%20STANDARDS.pdf> (accessed on 31 March 2015).

<sup>599</sup> Supreme Audit Office, "Strategic Plan 2013–2017", Supreme Audit Office (n.d): 10–12.

<sup>600</sup> Supreme Audit Office, "Strategic Plan 2013–2017", Supreme Audit Office (n.d): 11.

<sup>601</sup> MoJ, "Audit High Administration Law", 2013: Article 3 (2).

<sup>602</sup> Supreme Audit Office, "Strategic Plan 2013–2017", Supreme Audit Office (n.d): 11–12.

threaten their ability to act professionally.<sup>603</sup> Post-employment restrictions and rules of hospitality are not laid down for the SAO head, directors and staff, in the AHAL, SAO policy, strategy or code of conduct for civil servants.

**Score: 75**

#### **7.2.6 Integrity mechanisms (practice) – To what extent is the integrity of the audit institution ensured in practice?**

In practice SAO staff effectively implement the code of conduct in their activities, although they are not trained on integrity issues. There are no official data available about the SAO's staff regarding the violation of the code of conduct and other ethical issues in terms of giving and receiving gifts, conflicts of interest and unprofessional behaviour. In a conversation with one of the SAO staff members, every year two to three employees are fired after receiving several warnings. The reasons are multi-fold, but also include a violation of the code of conduct.<sup>604</sup>

Since there is no data available, it makes it rather difficult to assess these claims, or whether the existing code of conduct and conflict of interest policies have been implemented by SAO staff in practice.

Of the 2430 SAO national and international trainings in auditing, English and computing between 2003 (1382) and 2013 (1392) none was about integrity.<sup>605</sup> The Deputy Director of Technical Affairs at the SAO has emphasised that training in auditing standards is a training in integrity. If auditors perform their task according to INTOSAI standards, they would, in fact, avoid corruption and enhance their integrity.<sup>606</sup> Thus, although auditors are not trained on integrity issues, the assumption is that they develop a sense of integrity and honesty as they train themselves as an auditor.

### **7.3 ROLE**

**Score: 50**

#### **7.3.1 Effective financial audits – To what extent does the audit institution provide effective audits of public expenditure?**

The SAO's ability to conduct financial and performance audits of government organisations has improved in recent years, but still the performance audit reports have not been discussed with Wolesi Jirga's Finance and Budget Committee (as discussed above). As a member of INTOSAI, the SAO follows INTOSAI standards in examining internal audit within government departments. According to the Director of Plan and Policy, in previous years, a team from the SAO's IAQCD directly audited the public sector department's financial management and accounting. Based on the advice of the SAO's advisors and the World Bank's recommendations, since two years ago, the SAO does not directly examine the public sector's financial and accounting issues. In the compliance audit report, the auditors examine the financial reports of the public sector to determine the strengths and weaknesses of the internal audit performance. This approach saves time and has a positive impact on the quality of an audit report on Qatia financial statements.<sup>607</sup>

<sup>603</sup> Supreme Audit Office, "Audit Manual-Cum-Guidelines for Donors Funded Audits in Afghanistan", Deloitte (2007): 8.

<sup>604</sup> Interview with an employee of SAO, name withheld on request, Supreme Audit Office, Kabul, 8 April 2015.

<sup>605</sup> Supreme Audit Office, "Professional Audit Training Programs, English and Computer for Capacity Building of Auditors", Supreme Audit Office.

<sup>606</sup> Interview with Sayed Mahdi Hussaini.

<sup>607</sup> Interview with Ghulam Sarwar Hasheme.

The SAO conducts performance audits on programmes/projects to see whether the programme/project has reached its desired results with minimum expenses. The SAO's audit team looks at the overall performance of a particular ministry or other government entities, particularly focusing on the economy, effectiveness of the entity's programme, expenditure and implementation. Selection of the performance audit is based on the importance of the projects within a ministry.<sup>608</sup> In 2014 performance audits were conducted at the Ministry of Higher Education and the Ministry of Public Health. This year the SAO is conducting performance audits of the Ministry of Agriculture, Irrigation and Livestock and the Ministry of Public Work.<sup>609</sup>

Similar to the audit report on Qatia financial statements and the Income and Expenditure Audit Report, the Performance Audit Report is also submitted to the President and Wolesi Jirga on an annual basis and is published after its approval. However, the Performance Audit Report is not discussed by the Finance and Budget Committee of the Wolesi Jirga.<sup>610</sup>

The audit findings by the SAO are comprehensive and a brief on each government institution includes recommendations at the end of the report.

## **Score: 75**

### **7.3.2 Detecting and sanctioning misbehaviour – Does the audit institution detect and investigate misbehaviour of public officeholders?**

The SAO has investigated, collected and requested necessary information relating to the financial management of all government institutions and public–private partnerships. It has also recorded numerous misbehaviour cases in the recent years, but the law enforcement agencies do not always respond to all cases forwarded by the SAO.

The SAO plays an important role in combatting fraud and corruption. It has the power to request necessary information and gain access to all government and semi-government organisations' records to investigate financial irregularities and corruption. In 2012 (1391) the SAO uncovered two cases of fraud at Afghanistan Urban Water. Afghanistan Urban Water's two senior officials (Admin Director and the Internal Audit Director) had been selected by IARCSC based on fake bachelor documents and both cases were forwarded to the AGO for prosecution.<sup>611</sup> Another case of an officeholder's misbehaviour was detected by the SAO in the Agriculture Directorate of Laghman province. In 2011 (1390) the provincial director spent AFN 995,662 (US\$17,467.75) based on fake documents. The case was forwarded to the AGO for prosecution.<sup>612</sup>

Since 2003, the SAO has forwarded over 206 cases related to corruption to the AGO, but received feedback on only 10 to 12 cases.<sup>613</sup> SIGAR reported that according to the director of the SAO's Public Enterprises Audit Department, his department alone has referred 40 cases of corruption, fraud and/or theft to the AGO, but it has acted on only five cases. The director added that there are 35 pending cases, which involve high-ranking government officials and millions of dollars.<sup>614</sup> In

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<sup>608</sup> High Office of Oversight and Anti-Corruption, "National Priority Program 2: National Transparency and Accountability Program", High Office of Oversight and Anti-Corruption (2011): 43.

<sup>609</sup> Interview with Hayatullah.

<sup>610</sup> Interview with Sayed Mahdi Hussaini.

<sup>611</sup> Supreme Audit Office, "Auditor General Report on Expenditure," Supreme Audit Office (2012): 113

<sup>612</sup> Supreme Audit Office, "Auditor General Report on Expenditure," Supreme Audit Office (2012): 119.

<sup>613</sup> Kelid Group "Anti-corruption or its expansion" Kelid Group, <http://tkg.af/dari/report/research/9240-> (accessed on 2 April 2015).

<sup>614</sup> Special Inspector General for Afghanistan Reconstruction, "Afghanistan's Control and Audit Office Requires Operational and Budgetary Independence, Enhanced Authority, and Focused International Assistance to Effectively Prevent and Detect Corruption," SIGAR (2010): 7.

response to these claims, the AGO disagreed and declared that the AGO is not legally responsible to give reports on its performance to other agencies.<sup>615</sup>

The SAO does not have the power and authority to identify the responsibilities of the officeholders and sanction their misbehaviour.<sup>616</sup> As mentioned above, the SAO only has the power to request and collect information from internal audit units of each government institution and then forward its cases to the AGO.

**Score: 50**

### **7.3.3 Improving financial management – To what extent is the SAO effective in improving the financial management of government?**

To improve financial management and efficiency in the government budget, the SAO focuses on providing its recommendations at the end of each report based on the findings and challenges elaborated in the body of the reports. This includes the Qatia financial statements, income and expenditure report, and compliance report. In assessing the recommendations of the SAO audit reports, one can argue that their focus and aim is to detect misbehaviour and improve efficiency in the use of state funds.

The SAO follows up on its recommendations every year. In order to understand how much of the previous year's recommendations are implemented by the government organisations, an SAO audit team investigates its implementation progress and notes it in the new audit report. If no action is taken by the government entity regarding the issues addressed in the previous year's audit report, the President and Wolesi Jirga are notified in the new audit report.<sup>617</sup> For instance, in the audit report of the Qatia financial statements (2013), the President and Wolesi Jirga were notified that the Ministry of Finance did not effectively and completely implement the SAO's recommendations provided in the 2012 Qatia report.<sup>618</sup>

According to the Auditor General interview with SIGAR in 2010, "there is no real determination across Government of Islamic Republic of Afghanistan leadership to fight corruption, and SAO's reports often go unimplemented and unenforced".<sup>619</sup> The Auditor General also stated that the SAO does not have the authority to require the line ministries or the AGO to reply or take action on report recommendations.<sup>620</sup>

Since 2010, the problem of the SAO's recommendations implementation has not been addressed. Most recently, in an interview, the Director of Plan and Policy of the SAO stated that every year around 40 to 50 of the recommendations are implemented by public sector departments.<sup>621</sup> There is no example of any institution or organisation that has implemented all recommendations made by the SAO.

One of the reasons the SAO's recommendations are not taken seriously may be related to the lack of rules and regulations to penalise government organisations for not following the SAO's

<sup>615</sup> Kelid Group "Anti-corruption or its expansion" Kelid Group, <http://tkg.af/dari/report/research/9240-> (accessed on 3 April 2015).

<sup>616</sup> Interview with Ghulam Sarwar Hasheme.

<sup>617</sup> High Office of Oversight and Anti-Corruption, "National Priority Program 2: National Transparency and Accountability Program", High Office of Oversight and Anti-Corruption (2011): 47.

<sup>618</sup> Supreme Audit Office, "Audit Report on Qatia Accounts", Supreme Audit Office (2013): 114.

<sup>619</sup> Special Inspector General for Afghanistan Reconstruction, "Afghanistan's Control and Audit Office Requires Operational and Budgetary Independence, Enhanced Authority, and Focused International Assistance to Effectively Prevent and Detect Corruption", SIGAR (2010): 7.

<sup>620</sup> SIGAR, 2010: 7.

<sup>621</sup> Interview with Ghulam Sarwar Hasheme.

recommendations. Similar to the case of Pakistan, the SAO is struggling to ensure that the Finance and Budget Committee within Wolesi Jirga is solely responsible for the evaluation of audit report implementation.

### **Recommendations**

- In order to strengthen the accountability of the SAO, there should be clearer regulations on its own reporting requirements, including strict deadlines for submitting activity and financial reports, and the requirement for such reports to be submitted to, and discussed by, the Wolesi Jirga's Finance and Budget Committee before they are submitted to the President.
- The SAO should be given the power to impose administrative and/or budgetary sanctions in cases of irregularities or failure to cooperate on the part of any audited government entity or public–private partnership.

## 8. ANTI-CORRUPTION AGENCY (HIGH OFFICE OF OVERSIGHT AND ANTI-CORRUPTION)

### Summary

The High Office of Oversight and Anti-Corruption (HOOAC) is one of the weakest agencies within the Afghan state structure. Its weakness stems from its inadequate laws, lack of independence, allegations of corruption and, above all, weak leadership capacities. Compared to other National Integrity System (NIS) pillars, it is the institution with the least productivity and fewest concrete results. It is also among the organs of the state, which have the lowest public confidence. Many international donors and the Afghan National Assembly believe that the HOOAC should be abolished. Wolesi Jirga passed a resolution with a simple majority to this effect, which the Mashrano Jirga rejected.

The HOOAC has registered the assets of 8000 government officials but the assets have not been systematically verified. It has conducted dozens of anti-corruption educational programmes, but has not evaluated their impact. It has investigated cases of corruption against dozens of officials, but none of these cases has ever resulted in a successful prosecution. This failure is partly due to its over-ambitious mandate and the fact that it has parallel functions to constitutionally established government agencies. It is not practical for the HOOAC to oversee the implementation of the National Anti-Corruption Strategy, simplify administrative procedures, register assets, receive corruption-related complaints, investigate corruption cases and take preventive measures against corruption. In 2015, President Ghani reduced the mandate of the HOOAC to two functions: 1) asset registration and 2) simplifying administrative procedures.

### Structure and organisation

Afghanistan established the General Independent Administration Against Corruption (GIAAC) in 2003, but it did not make any achievements except signing the United Nations Convention Against Corruption because it lacked a clear policy, adequate resources and strong leadership.<sup>622</sup> However, the GIAAC continued to operate until differences between the President and the international community resulted in the dismissal of the agency. When President Karzai appointed Esatullah Wasefi as director of the GIAAC in 2007, the international community withdrew its support from the agency. Wasefi spent nearly four years in jail in the US for the sale and distribution of heroin.<sup>623</sup> In 2008, President Karzai abolished the GIAAC and established the HOOAC to fight corruption.

The director of the HOOAC is appointed by the President and is accountable to the President, Wolesi Jirga and the public. The HOOAC has two deputy directors, the Deputy Director of Policy and Oversight with five directorates,<sup>624</sup> and the Deputy Directorate of Administration and Finance with four directorates.

### Assessment

#### 8.1 CAPACITY

**Score: 25**

<sup>622</sup> Jeffrey Coonjohn, "Afghanistan: Final Assessment (High Office of Oversight and Anti-Corruption Assessment)", Independent consultant, 2012: 6 and 8.

<sup>623</sup> Coonjohn, 2012: 7–8.

<sup>624</sup> Three of its directorates were dropped in 2015 after the President Ghani reduced its authority.

### **8.1.1 Resources (law) – To what extent are there provisions in place that provide the Anti-Corruption Agency (ACA) with adequate resources to effectively carry out its duties?**

The HOOAC is one of 46 independent budgetary units of the state. Since the HOOAC is not mandated by the Constitution, there is no constitutional guarantee of financial resources for the HOOAC. The internal documents of the HOOAC have no provisions to ensure adequate financial resources, either. The Law on Overseeing the Implementation of the Administrative Anti-Corruption Strategy states that the HOOAC “prepares its budget and submits it to the Council of Ministers through the national budget for further proceedings.”<sup>625</sup> The “further proceedings” of this provision include the allocation of resources by an inter-ministerial committee called the Budget Hearing Committee. This committee consists of the Ministry of Foreign Affairs, the Ministry of Economics, the Ministry of Finance, and the Council of Ministers Secretariat.<sup>626</sup> Since there are no provisions in the Law on Overseeing the Implementation of the Administrative Anti-Corruption Strategy to ensure stability in the HOOAC budget, it is subject to the discretion of the Budget Hearing Committee to decide on the HOOAC budget. The lack of provisions to ensure the HOOAC’s budget adequacy and stability undermines its independence.

**Score: 25**

### **8.1.2 Resources (practice) – To what extent does the ACA have adequate resources to achieve its goals in practice?**

The HOOAC has some financial resources at its disposal and has competent professionals at all levels of the agency, but has failed to develop a functioning organisation. In 2013/2014 (1392) the HOOAC had 473 staff members,<sup>627</sup> which was increased to 503 in 2014/2015 (1393).<sup>628</sup> However, in 2015/2016 (1394), the number of staff members was reduced to 131.<sup>629</sup> The HOOAC budget was AFN 161 million (US\$2.8 million) in the 2013/2014 (1392) fiscal year. The budget was significantly increased to AFN 307 million (US\$5.3 million) in the following fiscal year, 2014/2015 (1393). The increase was mainly associated with the recruitment of new staff. In the 2015/2016 (1394) fiscal year, the HOOAC budget decreased by 36 per cent to AFN 228 million (US\$4 million).<sup>630</sup> For the first time since its establishment, the HOOAC budget decreased, because President Ashraf Ghani downsized the HOOAC structure and staff. This appears to demonstrate that the President had little confidence in the HOOAC to effectively tackle corruption in the country.

The HOOAC has also had problems with financial management, hindering its performance. In 2011, an independent report stated that “in the HOOAC, there is no functional line item budget and no application of generally accepted accounting principles.”<sup>631</sup> The lack of professional human resources to manage the financial affairs has affected the functioning of the HOOAC as an organisation. In addition to the budget allocated by the government of Afghanistan, the HOOAC has also received funding from different donors. For example, the USAID-funded and -implemented Assistance to Afghanistan Anti-Corruption Authority<sup>632</sup> was intended to strengthen the HOOAC’s policy-making, planning, management, operation and IT capacities.

<sup>625</sup> MoJ, “Anti-Corruption Strategies”, 2008: Article 8 (3).

<sup>626</sup> Maurits Rade, Dr Chuck Thiessen and Marie S. Huber, “Building a Better Budget: Assessing National Budget Efficiency and Service Delivery in the Ministry of Education and Public Health”, Equality for Peace and Development (Kabul: 2014): 14.

<sup>627</sup> Ministry of Finance, “1392 National Budget”, Directorate of General Budget (2014): 38.

<sup>628</sup> MoF, “1393 National Budget”, 2014: 52.

<sup>629</sup> MoF, “1394 National Budget”, 2015: 73.

<sup>630</sup> MoF, “1394 National Budget”, 2015: 49.

<sup>631</sup> Coonjohn, 2012: 17.

<sup>632</sup> United States Agency for International Development (USAID), “Assistance to Afghanistan Anti-Corruption Authority (4A) Project (Final Report)”, USAID, November 2013: 5.



Furthermore, the HOOAC also does not provide initial training courses for new staff members although it has provided at least one capacity-building training programme for its professional staff.<sup>633</sup> This demonstrates that the capacity-building of staff is not a priority and a common practice at the HOOAC. There are also scholarships for the HOOAC staff.<sup>634</sup> However, the number of scholarships is so small that they do not seem to have increased the capacity of the staff.

**Score: 25**

### **8.1.3 Independence (law) – To what extent is the ACA independent by law?**

The HOOAC is not explicitly anchored in the Constitution, but the Constitution obligates the state to eliminate corruption. Therefore, based on Articles 7, 75 and 142 of the Constitution, the LSIACS was passed in a Cabinet resolution and signed into the law as an executive order by the President in 2008. According to the LSIACS, the HOOAC is an independent organisation intended to supervise the implementation of an anti-corruption strategy and fight corruption.<sup>635</sup>

When the HOOAC was established in 2008, it did not have any investigative power. Under pressure from the international community and in light of pervasive corruption in the Karzai administration, the government increased the authority of the HOOAC. In 2010, President Karzai promoted the professional staff of the HOOAC to the position of Judicial Record Officers.<sup>636</sup> This was very critical in fighting corruption in Afghanistan, because the officers now had the authority to collect, document and investigate evidence related to corruption suspects, and present it to the AGO.<sup>637</sup> However, this increased authority of the HOOAC created a parallel functional authority with the AGO. In 2011, President Karzai ordered the Ministry of Justice to review the criminal laws in consultation with the HOOAC and other related offices, and assign penalties to the corrupt administrative acts, which are not considered in the existing laws.<sup>638</sup> Although the mandate of the HOOAC was expanded from a supervisory agency to an investigative organisation, there was no increase in its capacity.

The provisions laying out relations between the President and the director of the HOOAC, makes the HOOAC open to undue influence and interference by the President. According to the LSIACS, the President appoints the director of the HOOAC<sup>639</sup> to investigate cases of corruption, including in the Executive Branch. The appointment and removal of the director of the HOOAC does not require the approval of the Wolesi Jirga, unlike the Head of the Central Bank, who is appointed by the President and approved by Wolesi Jirga. Therefore, the President has the authority to appoint and remove the director at any time. These provisions do not meet the requirements of Article 6 of the United Nations Convention Against Corruption ensuring the “necessary independence” to their respective anti-corruption bodies.

Article 6 of the LSIACS obligates the HOOAC to oversee the implementation of an administrative anti-corruption strategy in government offices. The same article requires other persons and government agencies not to impede the smooth functioning of the HOOAC.<sup>640</sup> This provision has empowered the HOOAC to have a representative in all government agencies to investigate and report any allegations of corruption against civil servants.

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<sup>633</sup> High Office of Oversight and Anti-Corruption, “kurs amuzhshi ertaghaye zarfiyat baraye karmandan maslaki edara aali mubariza alahe fasad edari barguzar shud,” HOOAC, <http://anti-corruption.gov.af/fa/news/27844> (accessed on 17 April 2015).

<sup>634</sup> Interview with Senior Official (1) of the HOOAC, Kabul, 18 May 2015.

<sup>635</sup> MoJ, “Anti-Corruption Strategies”, 2008: Article 4.

<sup>636</sup> President of Islamic Republic of Afghanistan, Farman No: 61 dated 27/12/1388 (2009): Article 1.

<sup>637</sup> President of Islamic Republic of Afghanistan, Farman No: 61 dated 27/12/1388 (2009): Article 2.

<sup>638</sup> President of Islamic Republic of Afghanistan, Hukum No: 987 dated 19/02/1389 (2010): Article 1.

<sup>639</sup> President of Islamic Republic of Afghanistan, Hukum No: 987 dated 19/02/1389 (2010): 8.

<sup>640</sup> MoJ, “Anti-Corruption Strategies”, 2008: Article 6.

Score: 0

#### 8.1.4 Independence (practice) – To what extent is the ACA independent in practice?

The HOOAC has been neither independent nor impartial since its establishment. With its increase in authority, the HOOAC initiated high profile corruption cases, most of them allegedly politically-influenced. The leadership of the HOOAC was not politically impartial for half of the lifetime of the agency. According to an independent report, the director of the HOOAC, Dr Lodin, “intertwined his political interests *and* the political interests of the President with the overall interests of Afghanistan.”<sup>641</sup>

Before being appointed as the director of the HOOAC, Dr Lodin was active in politics and made both friends and enemies. A senior official at the HOOAC stated that corruption cases against Ismail Khan, the former governor of Herat, and Hazrat Omar Zakhilwal, the former Minister of Finance, were both politically motivated.<sup>642</sup> In 2003, Dr Lodin was appointed as the governor of Herat, but Ismail Khan, the governor at the time, did not accept his appointment and forced him to leave the city. When Dr Lodin became the director of the HOOAC, several cases were filed against Ismail Khan.

In 2012, an independent report pointed to the political affiliation of the director with the President, and of the deputy directors with the vice-presidents: “Whereas Dr. Lodin finds his political support in President Karzai, Mr. Khuramji [*Deputy Director of Policy*] is aligned with 1st Vice President Marshal Fahim, and Mr. Zalali [*Deputy Director of Admin and Finance*] is loosely allied with 2nd Vice President Karim Khalili.”<sup>643</sup> The political affiliation of the HOOAC leadership has undermined its legitimacy in investigating corruption cases and the agency has lost its credibility in the eyes of the public. A senior official of the HOOAC stated that whenever the HOOAC filed a case against high-ranking officials, including four ministers, governors and mayors,<sup>644</sup> the political block to which the leadership of the HOOAC was affiliated, pressurised them to drop the case.<sup>645</sup> Furthermore, the HOOAC did not have resources to investigate such cases.

The HOOAC cannot function properly without the assistance of other law enforcement agencies, but the HOOAC has not had good relations with the AGO. The director of the HOOAC has publically criticised the AGO for not processing cases submitted to it.<sup>646</sup> In its own defence, the AGO replied that most cases submitted by the HOOAC lacked sufficient evidence to be prosecuted in the court of law.<sup>647</sup> The HOOAC complains that the AGO does not report to them regarding the status of the cases submitted to them. The AGO, meanwhile, notes that it does not have to report to government agencies subordinated to AGO in the chain of command.<sup>648</sup>

<sup>641</sup> Coonjohn, 2012: 13.

<sup>642</sup> Interview with Senior Official (1).

<sup>643</sup> Coonjohn, 2012: 15.

<sup>644</sup> Kilid Group, “mubareza ba fasad ya tarweej aan,” Kilid Group, <http://tkg.af/dari/report/research/9240-?مبارز-مبا-فساد-يا-ترويج-ان> (accessed on 17 April 2015).

<sup>645</sup> Interview with Senior Official (1).

<sup>646</sup> Tamadon, “Azizullah Lodin: nahadhave dulati hamkari namikunand”, Tamadon, <http://tamadon.af/?p=4920> (accessed on 17 April 2015).

<sup>647</sup> Kilid Group, “mubareza ba fasad ya tarweej aan,” Kilid Group, <http://tkg.af/dari/report/research/9240-?مبارز-مبا-فساد-يا-ترويج-ان> (accessed on 17 April 2015).

<sup>648</sup> Kilid Group, “mubareza ba fasad ya tarweej aan,” Kilid Group, <http://tkg.af/dari/report/research/9240-?مبارز-مبا-فساد-يا-ترويج-ان> (accessed on 17 April 2015).

As a result of the above-mentioned problems, there has not been a single successful prosecution against a high-ranking official.<sup>649</sup>

## 8.2 GOVERNANCE

Score: 50

### 8.2.1 Transparency (law) – To what extent are there provisions in place to ensure that the public can obtain relevant information on the activities and decision-making processes of the ACA?

There are provisions in the LSIACS and other laws to ensure transparency in the HOOAC. According to Article 9, Section 18 of the LSIACS, for the purpose of public awareness, the HOOAC shall publish a report about its activities each year,<sup>650</sup> but there are no stated deadlines for publishing this report. The LSIACS does not stipulate any sanctions for the lack of publication and submission of reports by the HOOAC.

The Access to Information Law signed by the President in 2015 further strengthened the legal basis of transparency requirements. According to this law, the government has to establish an Access to Information Commission through which the citizens can request that government organisations provide information about their activities.<sup>651</sup> The HOOAC is bound by this law and shall provide information upon any citizen's request.

There are certain legitimate limits to the provision of information to the citizens. According to the Constitution, the provided information to the public shall not harm the rights of others and/or public security.<sup>652</sup> In addition, Afghan laws protect whistleblowers and the HOOAC is required not to disclose the identity of the people who collaborate with it. Article 14, Section 2 of the LSIACS states that disclosing the identity of an informant, witness, intellectual or the person who provides evidence and documents without their consent is prohibited.<sup>653</sup>

Score: 50

### 8.2.2 Transparency (practice) – To what extent is there transparency in the activities and decision-making processes of the ACA in practice?

The HOOAC has reported regularly on its activities to the President and the public, but has not reached out to the public to support its activities. The HOOAC has a website in Pashto, Dari and English, which contains its laws and regulations, news reports about its activities, its positions on corruption cases surfacing in the news, a very small sample of the registered assets and annual reports.

The HOOAC has regularly published its yearly reports since 2008 (1388). The reports outline the activities of each department within the HOOAC, as well as dispatches submitted by the regional offices. The reports also include the number of complaints received, cases submitted to the AGO, the process of asset registration of high-ranking officials, and public awareness programmes through TVs and schools. Generally, the reports only outline the number of cases, the number of programmes broadcasted and the number of people trained without providing any details about the

<sup>649</sup> Kilid Group, "mubareza ba fasad ya tarweej aan," Kilid Group, <http://tkg.af/dari/report/research/9240-مبارز-دبا-فساد-يا-؟> (accessed on 17 April 2015).

<sup>650</sup> MoJ, "Anti-Corruption Strategies", 2008: Article 9 (18).

<sup>651</sup> MoJ, "Access to Information", 2014: Article 4–6.

<sup>652</sup> MoJ, "Constitution", 2004: Article 50.

<sup>653</sup> MoJ, "Anti-Corruption Strategies", 2008: Article 14.

content of the cases, the programmes and the people trained. According to a senior official at the HOOAC, they are only “pen reports.”<sup>654</sup> This raises questions about the depth of accuracy of the HOOAC’s transparency.

**Score: 50**

### **8.2.3 Accountability (law) – To what extent are there provisions in place to ensure that the ACA has to report and be answerable for its actions?**

The HOOAC is accountable to the President. Article 9(19) of the LSIACS states that the HOOAC shall submit regular reports on its activities and achievements to the President.<sup>655</sup> The LSIACS states that the HOOAC is obligated to, “publish a report on its activities each year for the public awareness.”<sup>656</sup> Based on the LSIACS, the HOOAC is neither accountable to, nor must it submit reports to, the National Assembly. However, in March 2012, President Karzai issued Decree 61, which increased the authorities of the professional staff of the HOOAC to that of Judicial Record Officers, among others. Article 16 of the same decree states that “the HOOAC shall report about the implementation of this decree to the President, the National Assembly, and the people.”<sup>657</sup>

The HOOAC law protects and even rewards whistleblowers. It states that “individuals who cooperate in good will in the discovery of administrative corruption cases as an informant, or assist during the investigation of a trial as a witness, or provide proof/admissible evidence and documents, shall be immune from any type of pressure, intimidation and ill-treatment, and shall be rewarded.”<sup>658</sup>

The HOOAC has a standing Audit Department within its institution. Still, in 2011, the President ordered the organisation to carry out an internal assessment, identify corrupt staff and report it to the President.<sup>659</sup> This order was flawed, however. It asked the HOOAC to conduct this assessment only once and within six months after the issuance of the order. The order was time-bound and it did not obligate the HOOAC to subsequently carry out regular internal assessments and report to the President. The HOOAC is also not required to undergo an independent audit, and there are no citizen oversight committees. The law is silent about situations in which a citizen wants to complain against the HOOAC. Since the HOOAC is not a decision-making entity that prosecutes the cases investigated, the question of judicial review mechanisms is irrelevant.

**Score: 25**

### **8.2.4 Accountability (practice) – To what extent does the ACA have to report and be answerable for its actions in practice?**

The HOOAC has published regular reports about its activities. It submits monthly reports to the President and the Wolesi Jirga, which are also published on the HOOAC website.<sup>660</sup> The HOOAC website contains monthly reports, which are summarised in yearly reports. However, the reports are not comprehensive, especially regarding the details of complaints, the procedure of investigation and the status of cases submitted to the AGO. A senior official at the HOOAC stated that most of the reports are not accurate and do not reflect the actual activities of the HOOAC.<sup>661</sup>

<sup>654</sup> Interview with Senior Official (1). Pen reports are understood as being untrue.

<sup>655</sup> Ibid., Article 9 (19).

<sup>656</sup> Ibid., Article 9 (18).

<sup>657</sup> President of Islamic Republic of Afghanistan, Farman No: 61 dated 27/12/1388 (2009): 16.

<sup>658</sup> President of Islamic Republic of Afghanistan, Farman No: 61 dated 27/12/1388 (2009): Article 14, Section 1.

<sup>659</sup> President of Islamic Republic of Afghanistan, Farman No: 45 dated 05/05/1391 (2011), Section: 7.

<sup>660</sup> Interview with Senior Official (1).

<sup>661</sup> Interview with Senior Official (1).

The head of the HOOAC is responsible for the activities of his staff. However, there is a lack of engagement of HOOAC staff with the general public. The HOOAC has not organised any community-based anti-corruption monitoring groups. According to an expert, the HOOAC does not have the resources for such large-scale mobilisation.<sup>662</sup>

In spite of existing laws to protect whistleblowers, the HOOAC requested that the AGO arrest a former employee who had published an article in a national newspaper accusing the HOOAC and its director of corruption. The author remained in custody for 11 days until the President, under pressure from civil society and the public, ordered his release.<sup>663</sup>

**Score: 25**

#### **8.2.5 Integrity mechanisms (law) – To what extent are there mechanisms in place to ensure the integrity of members of the ACA(s)?**

The HOOAC does not have an exclusive code of conduct for its staff. However, the Civil Servants Code of Conduct applies to its employees.<sup>664</sup> The Civil Servants Code of Conduct has provisions pertaining to conflicts of interest, rules on gifts and hospitality. (see public sector pillar for details.)

According to the Civil Servants Code of Conduct, the director and two deputy directors of the HOOAC, in contrast to other civil servants, are not required to register their assets, although this gap has been filled by the LSIACS, because the leadership of the HOOAC is bound by the LSIACS to register its assets. The Code of Conduct also does not cover “contracted staff”, who are often employed in all government agencies and the HOOAC.

The law does not include any requirement for integrity screening of potential candidates during HOOAC recruitment. The lack of such a provision may affect the integrity of the HOOAC staff. There are no rules on post-employment for the staff and leadership of the HOOAC. There is also no requirement to establish a body, i.e., ethics committee or other structures, to monitor the compliance of HOOAC staff with the Civil Servants Code of Conduct.

**Score: 0**

#### **8.2.6 Integrity mechanisms (practice) – To what extent is the integrity of members of the ACA ensured in practice?**

The Civil Servants Code of Conduct is not effective in ensuring ethical behaviour, especially among the leadership of the HOOAC. There are allegations of corruption against former leaders of the HOOAC. As noted above, according to an independent report in 2012, the two deputy directors of the HOOAC were politically affiliated.<sup>665</sup> As of August 2015, they still continue to work in their positions. Dr Azizullah Lodin, the former director of the HOOAC, was accused of corruption in two separate cases. In the first case, he was accused by a former employee of the HOOAC to have dropped corruption cases against several people involved in embezzlement at Pashtany Bank.<sup>666</sup> In another case, he was accused by the President of the Defence Committee of the Wolesi Jirga to

<sup>662</sup> Interview with an anti-corruption expert, name withheld on request, 8 April 2015.

<sup>663</sup> BBC Persian, “nahad haye hami rasanaha khastar rahayee sakhizada shudand”, BBC Persian, [www.bbc.com/persian/afghanistan/2013/07/130716\\_k02-sakhizada-nai](http://www.bbc.com/persian/afghanistan/2013/07/130716_k02-sakhizada-nai) (accessed on 17 April 2015).

<sup>664</sup> Ministry of Justice, “Code of Conduct of Civil Servants,” Official Gazette 900 (1387[2008]): Article 6.

<sup>665</sup> Coonjohn, 2012: 14–15.

<sup>666</sup> Mandegar Daily, “rabari edara mubareza ba fasaad ghargh dar fasaad ast”, Mandegar Daily, [www.mandegardaily.com/%D9%86%D8%A7%D9%85%DB%80-%D9%88%D8%A7%D8%B1%D8%AF%D9%87-%D8%A8%D9%87-%D8%B1%D9%88%D8%B2%D9%86%D8%A7%D9%85%D9%87-%D8%B1%D9%87%D8%A8%D8%B1%DB%8C-%D8%A7%D8%AF%D8%A7%D8%B1%DB%80-%D9%85%D8%A8%D8%A7%D8%B1/](http://www.mandegardaily.com/%D9%86%D8%A7%D9%85%DB%80-%D9%88%D8%A7%D8%B1%D8%AF%D9%87-%D8%A8%D9%87-%D8%B1%D9%88%D8%B2%D9%86%D8%A7%D9%85%D9%87-%D8%B1%D9%87%D8%A8%D8%B1%DB%8C-%D8%A7%D8%AF%D8%A7%D8%B1%DB%80-%D9%85%D8%A8%D8%A7%D8%B1/) (accessed on 1 September 2015).

have requested US\$16 million in connection with a contract of the Ministry of Defence.<sup>667</sup> No actions were taken against Lodin nor did he attempt to clear the allegation against him. Prior to Lodin, Ezatullah Wasefi, who had served as the governor of Farah and was removed from his job due to corruption, was appointed to lead the GIAAC. Other directors of anti-corruption agencies were largely ineffective.<sup>668</sup>

Forging documents is another issue among HOOAC staff. According to an independent report, "...a cabal of ethical challenges remains as a growing and persistent problem and there are no less than three on-going investigations concerning forged academic credentials among senior staff."<sup>669</sup> Neither the administrative staff nor the professional staff of the HOOAC is trained on a regular basis on integrity issues. In spite of several allegations and reports of breaches of the code of conduct, there has been no case of dismissal or other disciplinary measures at the HOOAC.

### 8.3 ROLE

**Score: 50**

#### 8.3.1 Prevention – To what extent does the ACA engage in preventive activities regarding fighting corruption?

The HOOAC has engaged in preventive activities like educational programmes and asset registration; however, these activities have not substantially reduced or controlled corruption in the country. The Corruption Prevention Directorate within the HOOAC is responsible for taking preventive measures against corruption. In the past year, it has participated in 101 bidding meetings where service or logistic contractors competed to win government contracts and the HOOAC has objected to 11 cases and requested their re-evaluation.<sup>670</sup> However, the HOOAC did not participate in hundreds of other bidding meetings, although it is mandated to do so.

To eliminate the risk of corruption, the HOOAC has simplified five bureaucratic procedures in government offices, including car licences and the verification of educational degrees.<sup>671</sup> An expert who was interviewed appreciated the process of simplification, but pointed out that simplifying five procedures is too little, because there are hundreds of complicated and corruption-prone bureaucratic procedures.<sup>672</sup> Moreover, the HOOAC has not evaluated whether the simplification of programmes has led to a reduction in corruption.

As a preventive measure, the HOOAC registers the assets of public officials. Article 154 of the Constitution states, "The wealth of the President, Vice-Presidents, Ministers, members of the Supreme Court as well as the Attorney General, shall be registered, reviewed and published prior and after their term of office an organ established by law."<sup>673</sup> The LSIACS has extended this obligation to "Deputy Ministers, Directors, Members of National Assembly (Both Houses), Provincial and District Councils, Independent Commissions/Bodies, Ambassadors, Governors, Judges, Military and Police Officers, District Administrators, Prosecutors, High Ranking Officials (Grade 2 and

<sup>667</sup> Radio Azadi, "raees adara aali mubaraza ba fasad edari guftahaye raees kumisoona omor dafayi wolesi Jirga ra rad yaad kard", Radio Azadi, <http://da.azadiradio.mobi/a/24697063.html> (accessed on 17 April 2015).

<sup>668</sup> Naser Timory and Sayed Ikram Afzali, "Taking on Corruption: Institutional Arrangement to Fight Corruption in Afghanistan", Integrity Watch Afghanistan, 2015: 2.

<sup>669</sup> Coonjohn, 2012: 14.

<sup>670</sup> High Office of Oversight and Anti-Corruption (HOOAC), "guzarash ejra'at shish mahe awale saal 1393," HOOAC, 2014: 5.

<sup>671</sup> High Office of Oversight and Anti-Corruption (HOOAC), "guzarash ejra'at shish mahe awale saal 1393," HOOAC, 2014: 5.

<sup>672</sup> Interview with an anti-corruption expert, name withheld on request, 8 April 2015.

<sup>673</sup> MoJ, "Constitution", 2004: Article 154.



above), and employees of financial, accounting, audit and procurement department of each government institution.”<sup>674</sup>

Some MPs have disputed the compatibility of such a law with the Constitution, arguing that Article 154 has explicitly identified five categories of people to register their assets. Therefore, only two MPs have registered their assets.<sup>675</sup> In addition, the LSIACS stipulates that the HOOAC is obligated to “register, review and publish the registered assets if needed.”<sup>676</sup> This contradicts Article 154 of the Constitution that obligates the state to publish the registered assets.

According to the Public Official’s Asset Registration Strategy that is prepared by the HOOAC, the principles of an asset declaration regime is:

- Clarity about what assets, liabilities and interests public officials are to disclose
- Legal requirement for the verification of asset declarations
- Effective sanctions and clarity over the prosecution of offences
- Public access to officials’ asset declarations
- Adequate resources (manpower, technical and financial) allocated to implement the scheme, especially with regard to the verification of submitted declarations<sup>677</sup>

Two months after accepting and starting official employment in the above-mentioned categories, on a yearly basis, and prior to ending the employment contract, all public officials have to declare their and their wives’ and children’s immovable property, moveable property (cash over AFN 100,000.00, goods and gold over AFN 200,000.00, vehicles and machineries over AFN 300,000.00), commercial and business activities, shares, bonds, securities, financial obligations and loans, personal income, including salaries, and educational expenditures.”<sup>678</sup>

Once the assets and income registration forms are submitted, the HOOAC starts the verification process. According to the HOOAC Strategic Plan, the verification of the registered assets takes place in three ways:

First, administrative verification which is to ensure that the assets registration form is filled properly and without any blanks. Second, the new form of declaration will be compared with the old ones to find irregularities in the level of income and assets. Third, declarations can be verified against tax, bank, property or other records.<sup>679</sup>

The Asset Registration Directorate has held orientation courses for high-ranking officials to register their assets. Even though there is no information available in HOOAC publications or on the website, the HOOAC claims that around 8000 government officials have registered their assets.<sup>680</sup>

There are also serious problems in the asset verification process. The lack of resources and capacity, Afghanistan’s informal economy and insecurity are some of the impediments hindering the process of asset verification. Consequently, out of the thousands of registered assets, neither has a single official’s assets been found to be fraudulent nor has any asset owner been prosecuted.

<sup>674</sup> MoJ, “Anti-Corruption Strategies”, 2008: Article 12(2).

<sup>675</sup> Interview with Senior Official (2) of the HOOAC, Kabul, 18 May 2015.

<sup>676</sup> Interview with Senior Official (2).

<sup>677</sup> HOOAC, “Public Official’s Asset Declaration Strategy”, Department of Asset Registration (November 2009): 3.

<sup>678</sup> HOOAC, “Public Official’s Asset Declaration Strategy”, Department of Asset Registration (November 2009): 6.

<sup>679</sup> HOOAC, “Anti-Corruption Strategic Plan 2011–2013”, HOOAC (2010): 30.

<sup>680</sup> Rafi Sediqi, Officials Fail to Register Assets for Anti-Corruption Effort”, Tolo News, [www.tolonews.com/en/afghanistan/14945-officials-fail-to-register-assets-for-anti-corruption-effort](http://www.tolonews.com/en/afghanistan/14945-officials-fail-to-register-assets-for-anti-corruption-effort) (accessed on 5 March 2015).



There are problems in the publication of registered assets. As of September 2015, the assets of 66 key government officials from the previous administration, including the President, ministers, members of the Supreme Court, provincial governors and the Attorney General, have been published.<sup>681</sup> The assets of the officials of the new administration that came to power in September 2014 have not been published yet. The HOOAC argues that publication of registered assets creates security issues.<sup>682</sup>

The HOOAC has the authority to propose amendments to laws related to anti-corruption. The Corruption Prevention Directorate has completed proposals to amend nine laws and is working on five existing laws.<sup>683</sup> This is quite critical for strengthening the anti-corruption framework in Afghanistan. According to an anti-corruption expert, one of the major challenges in fighting corruption is contradictory, vague and non-comprehensive laws.<sup>684</sup> For example, Article 12(2) of the LSIACS requires MPs to register their assets but Article 154 of the Constitution has listed only five categories of officials who need to register their assets.

The HOOAC is mandated to give advice to government agencies on how to implement the National Anti-Corruption Strategy, but there are no instances where government agencies have requested that the HOOAC advise them on anti-corruption issues.

The public does not believe that the HOOAC is effective in its work. According to USAID “only 25% of the public have general confidence in the HOOAC, much lower than in tribal leaders, the police, and the national government, but a little higher than the formal rule of law institutions.”<sup>685</sup> According to the HOOAC, it received 458 complaints in the first six months of 1392,<sup>686</sup> but none have been successfully investigated and/or have produced results.

According to Article 9 of the HOOAC law, the organisation is mandated to carry out “necessary studies in order to find appropriate and effective ways for overseeing the implementation of the administrative reform strategy and combatting administrative corruption.”<sup>687</sup> The mechanism for the establishment of a department to conduct research was further elaborated in a presidential decree. According to Presidential Order No. 61, the HOOAC shall propose and establish within its organisation a MEC comprised of Afghan and international community experts.<sup>688</sup> Instead of establishing a Monitoring and Evaluation Committee within the HOOAC, the MEC was established outside the jurisdiction of the HOOAC. As the international community provides the budget of the MEC,<sup>689</sup> the donors seem to have influenced the decision to establish the MEC outside the authority of the HOOAC. Since its establishment in 2010, the MEC and the HOOAC have had an antagonistic relationship. Despite this, the MEC has produced some of the best quality research on anti-corruption, including its Vulnerability to Corruption Assessment and its bi-yearly report.

## Score: 50

<sup>681</sup> High Office of Oversight and Anti-Corruption, “Assets Declaration”, High Office of Oversight and Anti-Corruption, <http://anti-corruption.gov.af/fa/page/test/7663> (accessed on 5 March 2015).

<sup>682</sup> Interview with Senior Official (2).

<sup>683</sup> High Office of Oversight and Anti-Corruption (HOOAC), “guzareh ejrahat shish mahe awale saal 1393”, HOOAC, 2014: 6–7.

<sup>684</sup> Interview with an anti-corruption expert (name withheld on request), 8 April 2015.

<sup>685</sup> United States Agency for International Development (USAID), “Assistance to Afghanistan Anti-Corruption Authority (4A) Project (Final Report)”, USAID, November 2013: 12.

<sup>686</sup> High Office of Oversight and Anti-Corruption, “guzareh ejrahat shish mahe awale saal 1393”, HOOAC, 2014: 25.

<sup>687</sup> MoJ, “Anti-Corruption Strategies”, 2008: Article 9(4).

<sup>688</sup> President of Islamic Republic of Afghanistan, Farman No: 61 dated 27/12/1388 (2009): Article 8.

<sup>689</sup> Government of UK, “Launch of a new anti-corruption group in Afghanistan,” Government of UK, [www.gov.uk/government/news/launch-of-new-anti-corruption-group-in-afghanistan](http://www.gov.uk/government/news/launch-of-new-anti-corruption-group-in-afghanistan) (accessed on 31 August 2015).

### 8.3.2 Education – To what extent does the ACA engage in educational activities regarding the fight against corruption?

The Media and Public Education Directorate of the HOOAC is mandated to educate the public. It has held awareness-raising campaigns for school students and students of the Police Academy, given seminars for students and the general public and prepared TV and radio programmes through Afghanistan National TV.<sup>690</sup> The HOOAC has also held integrity trainings for civil servants. A senior official at the HOOAC stated that the agency has not evaluated the impact of any of its programmes, including the educational ones.<sup>691</sup> Without evaluating the impact of its preventive programmes, the HOOAC is not sure whether the initiatives have any effect. However, according to an observer, the programmes did not have any significant impact.<sup>692</sup>

The problems in the HOOAC leadership have also had an impact on its relations CSOs. Although there are less than a dozen anti-corruption NGOs, the HOOAC has not effectively reached out to them to mobilise their resources in fighting corruption. According to an expert, the HOOAC has the least welcoming relations with CSOs, compared to many other government agencies.<sup>693</sup>

**Score: 0**

### 8.3.3 Investigation – To what extent does the ACA engage in investigations regarding alleged corruption?

Currently, the HOOAC does not have investigative authority, but even when it did have such authority, it experienced legal and practical ups and downs. In practice, the cases investigated by the HOOAC were not prosecuted, because, according to the AGO, there was not enough evidence to prosecute these in a court of law.<sup>694</sup>

In 2009 SIGAR reported, “the Case Tracking Department was unable to provide SIGAR with information on whether [...] cases resulted in any prosecution, conviction, or sentencing.”<sup>695</sup> In 2010, the President authorised for HOOAC staff to have Judicial Records Officer capacity to investigate cases related to corruption. Henceforth, the HOOAC proactively started to investigate allegations of corruption against former and current high-ranking officials, including ministers and submitted the cases to the AGO.<sup>696</sup> None of the cases documented and submitted to the AGO resulted in successful prosecution between 2010 and 2012. In 2012, an independent report stated, “within the last year the Case Tracking Department completed more than 140 investigations of high-level government officials. No charges have been filed on any of the cases as of the writing of this report.”<sup>697</sup> According to HOOAC, it received 458 complaints in the first six months of 2013 (1392),<sup>698</sup> but none have been successfully investigated and/or have produced results.

One of the reasons behind the failure of prosecution of corruption cases by the HOOAC and the AGO has been the organisational conflict. The conflict between the AGO and HOOAC began when

<sup>690</sup> High Office of Oversight and Anti-Corruption (HOOAC), “guzarash ejrahat shish mahe awale saal 1393,” HOOAC, 2014: 19–23.

<sup>691</sup> Interview with Senior Official (1).

<sup>692</sup> Interview with an anti-corruption expert, name withheld on request, 8 April 2015.

<sup>693</sup> Interview with an anti-corruption expert, name withheld on request, 8 April 2015.

<sup>694</sup> Kilid Group, “mubareza ba fasad ya tarweej aan,” Kilid Group, <http://tkg.af/dari/report/research/9240-مبارز-مبا-فساد-يا-تر-ويج-آن> (accessed on 17 April 2015).

<sup>695</sup> Special Inspector General for Reconstruction of Afghanistan (SIGAR), “High Office of Oversight”, SIGAR, Quarterly Report, December 2009: 10.

<sup>696</sup> Interview with Senior Official (1).

<sup>697</sup> Coonjohn, 2012: 18.

<sup>698</sup> High Office of Oversight and Anti-Corruption, HOOAC, “guzarash ejrahat shish mahe awale saal 1393”, HOOAC (2014): 25.

the President authorised the HOOAC to investigate cases of corruption – something that had been exclusively done by the AGO previously. This created a persisting organisational conflict, due to duplication of work, between the AGO and HOOAC that affected the joint investigation and prosecution of corruption cases. According to Gul Rahman Qazi, the head of the Commission Overseeing the Implementation of the Constitution, the HOOAC interferes with constitutionally mandated tasks of the AGO and has slowed down the process of the fight against corruption.<sup>699</sup> The Wolesi Jirga also believes that the HOOAC has parallel functions to the AGO and is ineffective. In April 2014, the government presented an Anti-Corruption Law to be passed by the National Assembly. The proposed law obligated MPs to declare their assets among other things. In June 2014, the Wolesi Jirga passed a resolution to dissolve the HOOAC as a government institution citing its ineffectiveness.<sup>700</sup> The Wolesi Jirga vote was rejected by Mashrano Jirga and the Wolesi Jirga did not overwrite the decision of the Mashrano Jirga. The HOOAC thus still exists as a government institution.

In 2015, President Ghani reduced the authority of the HOOAC.<sup>701</sup> Since the Presidential Order in 2015, the HOOAC only simplifies administrative procedures and registers official assets. According to a HOOAC senior official, simplifying administrative procedures should also be the authority of the IARCSC, not the HOOAC.<sup>702</sup>

### Recommendations:

- The ACA should be mandated with prevention and investigation of corruption, in addition to outreach and education, and governed by a law that meets international standards.
- The ACA should be well resourced, enjoying a protected and adequate budget, suitably qualified staff with opportunities to develop, and a strong leadership to foster and drive forward strategic goals.
- The ACA should have clear lines of accountability and sound ethics policies to avoid political bias or conflicts of interest within the agency.
- The ACA should set up memoranda of understanding with relevant institutions, including the Police, the AGO, the Supreme Court and civil society to promote a collaborative and efficient working model.
- The ACA should have a robust independent oversight mechanism, human resource policies and code of conduct.
- Commissioners with high levels of integrity, professionalism and commitment should be appointed by the President with the endorsement of the National Assembly. The head of the commission should be nominated in consultation with, and based on the consensus of, all the other commissioners.

<sup>699</sup> Nematullah Tanin, "Nakami baranam-e sabt-e daraee mughamat," Killid Group, <http://tkg.af/dari/report/research/12788-%D9%86%D8%A7%D9%83%D8%A7%D9%85%DB%8C-%D8%A8%D8%B1%D9%86%D8%A7%D9%85%D9%87-%D8%AB%D8%A8%D8%AA-%D8%AF%D8%A7%D8%B1%D8%A7%DB%8C%DB%8C%E2%80%8C%D9%87%D8%A7%DB%8C-%D9%85%D9%82%D8%A7%D9%85%D8%A7%D8%AA> (accessed on 28 July 2015).

<sup>700</sup> High Office of Oversight and Anti-Corruption, "piramoon musaweba murakh 21/03/1393 wolesi Jirga huraye mili," HOOAC, <http://anti-corruption.gov.af/fa/news/34067> (accessed on 17 April 2015).

<sup>701</sup> Interview with Senior Official (1).

<sup>702</sup> Interview with Senior Official (1).

## 9. POLITICAL PARTIES

### Summary

The Constitution of Afghanistan guarantees political pluralism and contains safeguards against the state dissolving political parties. However, the Constitution does not allow political parties any formal role in the political system. The Law of Political Parties is ambiguous about the financial transparency and accountability of political parties. The Law of Political Parties also does not require or recommend internal democratic procedures for political parties.

Although there are no known cases of intimidation of political parties' members and activists, and no reports of interference by state authorities in parties' activities, the Karzai administration (2001–2014) was anti-party. Karzai had no backing of and no base in political parties. He also believed that political parties were the main reason for Afghanistan's 30 years of political and economic misery. President Ghani has promised to move away from anti-party policies, but no practical steps have been taken in this direction.

Afghan political parties became infamous for their role in war and conflict between 1978 and 2001. Since 2001, the same political parties have tried to hide their former military background and reconstruct their image by joining the new "democratic" process. However, Afghan political parties have a long way to go to become democratic and institutionalised political organisations. The majority of the political parties are ethnicity- or language-based. Only a few political parties have support beyond their particular ethnic groups and/or language groups.

### Structure and organisation

After the Law of Political Parties was passed in 2003, 110 political parties registered.<sup>703</sup> The 2003 law had very few requirements to establish a new political party. Therefore, a new law with more and stricter regulations was needed to reduce the number of political parties. With the Law of Political Parties passed by the National Assembly in 2009, only half of the registered political parties could meet the restrictive requirements of the new law. Currently, there are 67 registered political parties in Afghanistan.<sup>704</sup>

For the purpose of this study, six of the largest, ideologically and ethnically most diverse, and most popular political parties are included in this research. These are: Jamiat-e Islami [Jamiat] (1956<sup>705</sup>), Afghan Millat (1966), Hizb-e Islami [Hizb] (1973), Wahdat Islami Mardum Afghanistan [Wahdat] (1988), Junbish Mili-e Islami Afghanistan [Junbish] (1991) and the Right and Justice Party [RJP] (2012).<sup>706</sup> Of these, no political party is officially included in the government, but members of all parties excluding Afghan Millat are part of the Executive and have other high-ranking positions.

The last three decades of the twentieth century were dominated by Islamist and Communist parties, infamous for their brutality and the atrocities committed during their time in power. The Communists ruled between 1978 and 1992, and the Islamists during the Jihadi period of the Communist era and the Soviet occupation (1978–1992) and their reign and the civil war (1992–1996). The majority of current political parties in Afghanistan are new. Some have drawn their beliefs from the old

<sup>703</sup> International Crisis Group, "Afghanistan's Parties in Transition", International Crisis Group, 2013: 5.

<sup>704</sup> Ministry of Justice, "Registered Political Parties and Social Organizations," Ministry of Justice, <http://moj.gov.af/fa/page/registered-political-parties-and-social-organizations/1700> (accessed 7 May 15).

<sup>705</sup> The year refers to the year of its founding.

<sup>706</sup> The year of establishment is marked in each party's logo and flag.

Communist and Islamist parties' ideologies, while others have embraced new modes of thinking. The Islamist parties and Jihadi groups of the Jihadi period continue to dominate the political scene.

The role of political parties has never been formalised within the political system of Afghanistan.<sup>707</sup> The 2004 Constitution guarantees the existence and plurality of political parties, but it does not give them any formal role in the National Assembly.

## Assessment

### 9.1 CAPACITY

**Score: 50**

#### 9.1.1 Resources (law) – To what extent does the legal framework provide an environment conducive to the formation and operations of political parties?

The legal framework for forming a political party is restrictive, because a political party has to have offices in 20 provinces and 10,000 members to be registered as a political party.<sup>708</sup> Such regulations are quite difficult to meet for all political parties, especially the smaller and newly established ones. However, the government states that through these restrictions, it wants to render political parties national rather than local. The law intends to prevent the concentration of leadership of a political party in one region or one province. There are, however, differences of opinion about these restrictions among the political parties. The larger political parties have welcomed the new regulations,<sup>709</sup> because they have the resources to have offices in 20 provinces and make sure that they maintain 10,000 members.<sup>710</sup>

The Law of Political Parties states, “the political system of the Islamic Republic of Afghanistan is based on democracy and plurality of political parties.”<sup>711</sup> Freedom of association and formation of political parties is explicitly anchored in Article 35 of the Constitution. The objective of formation of a political party is defined as the fulfilment of moral and material public demands.<sup>712</sup> However, the Constitution does not mention any role for the political parties within the state structure. The National Assembly does not officially recognise and acknowledge political parties and there are no parliamentary regulations dealing with the political role and financial affairs of political parties.

Since Afghanistan had troubling experiences with political parties prior to 2001, the 2004 Constitution placed a range of restrictions on the ideology, source of income and military aims of political parties. The formation and operation of a party on the basis of tribalism, regional sectarianism, language and religio-fiqh<sup>713</sup> division is not permitted.<sup>714</sup> People have the right to form a political party provided that the party's manifesto does not contravene the tenants of Islam, its financial sources are transparent, it does not have military aims and is not affiliated with foreign political parties.<sup>715</sup>

<sup>707</sup> Anna Larson, “Political Parties in Afghanistan,” Special Report 362, United States Institute of Peace (1 March 2015).

<sup>708</sup> The Ministry of Justice, “Law on Political Parties”, Official Gazette 996 (1388AH [2009]): Article 9.

<sup>709</sup> Interview with representatives of six political parties, Kabul, April–May 2015.

<sup>710</sup> International Crisis Group, 2013: 9.

<sup>711</sup> MoJ, “Law on Political Parties”, 2009: Article 3.

<sup>712</sup> MoJ, “Constitution”, 2004: Article 35.

<sup>713</sup> Difference of Schools: Sunni–Shia.

<sup>714</sup> MoJ, “Constitution”, 2004: 35.

<sup>715</sup> MoJ, “Constitution”, 2004: 35.

The legal process of establishing a political party is also lengthy. There have to be a minimum of 35 founders from 20 out of 34 provinces of Afghanistan.<sup>716</sup> Upon meeting these requirements, a registration form has to be collected from the Ministry of Justice in return for a fee of AFN 1000 (US\$20) and the respected party must complete it within six months.<sup>717</sup> The Ministry of Justice issues a certificate of registration for a cost of AFN 25,000 (US\$500) to a political party and will publish the news of its formation in the media at the expense of the party.<sup>718</sup>

The Constitution and the Law of Political Parties have ensured that political parties have a fair chance of registration. If a group of people believe that they meet the legal requirements to establish a political party, but the Ministry of Justice rejects the registration of their political party, they can appeal to the Supreme Court.<sup>719</sup> If the Supreme Court overwrites the decision of the Ministry of Justice and allows a political party to be registered, the decision is final.

Political parties have to renew their registration with the Ministry of Justice every five years or they will be deregistered six months after the expiration of the registration.<sup>720</sup> This process of renewal enables the Ministry of Justice to not allow the re-registration of political parties that have broken the law and/or have adopted an agenda that is considered offensive and illegal.

According to the Regulation on Establishment and Registration of Political Parties, the state shall provide financial assistance to political parties during elections<sup>721</sup> to cover part of their expenses. This financial assistance is not extended to independent candidates. The political parties have to maintain their offices and expenses on their own.

There is no provision to ensure democratic decision-making within political parties. However, there are provisions about the activities of political parties. Political parties shall not infiltrate the armed forces or form military or paramilitary organisations. A party shall not use force or threatening language against the state, individuals and other political parties.<sup>722</sup>

## Score: 25

### 9.1.2 Resources (practice) – To what extent do the financial resources available to political parties allow for effective political competition?

There are officially no parties in the government and no opposition parties in Afghanistan; therefore, the financial sustainability of small and large, new and old political parties depends on their relationship with the government, the public and the financial elite. None of the six major political parties rely on their membership fees and formal donations to financially maintain their organisations.

None of the political parties have any idea about their exact number of members. They all approximate their numbers, but when asked, some political parties estimated their membership in millions.<sup>723</sup> In our interview with Junbish, it was stated that they have one-and-half-million members and followers, while Jamiat-e Islami stated that all those who voted for Abdullah Abdulla were their members and followers. This suggests that they have around three to four million members. When

<sup>716</sup> Ministry of Justice, "Regulation on Establishment and Registration of Political Parties", Official Gazette 1026 (1389AH [2010]): Article 9.

<sup>717</sup> MoJ, "Regulation on Political Parties", 2010: Article 5(2) and (3).

<sup>718</sup> MoJ, "Regulation on Political Parties", 2010: Article 12(2).

<sup>719</sup> MoJ, "Regulation on Political Parties", 2010: Article 11.

<sup>720</sup> MoJ, "Regulation on Political Parties", 2010: Article 12.

<sup>721</sup> MoJ, "Regulation on Political Parties", 2010: Article 15(4).

<sup>722</sup> MoJ, "Law on Political Parties", 2009: Article 6.

<sup>723</sup> Interview with representatives of six political parties, Kabul, April–May 2015.



requested, none of the political parties could provide evidence to their claim of having a million members.<sup>724</sup> Some Afghan political parties are popular, but none are institutionalised enough to maintain membership in the millions.

The reasons political parties have difficulties in collecting membership fees is manifold, but the financial treatment of party members during the Jihadi period has contributed to this dilemma. Political parties in this period paid people to become members of their parties. According to a deputy of the RJP, during the period of Jihad, the Jihadi groups and political parties paid their members to maintain their support.<sup>725</sup> Since 2001, when the already established and new political parties ask their members to pay membership fees, they are puzzled. There are some political parties that collect membership fees, but none are able to cover their costs through membership fees only.

In general the financial capacities of political parties remain weak. Office rents, staff salaries and ensuring continued campaigns remain constant challenges. Since each political party must have offices in at least 20 provinces, financial sustainability has become a problem for all small and large, old and new political parties. According to Moeen Marastial, the minimal yearly maintenance costs of a political party are about US\$100,000.<sup>726</sup> Very few political parties are able to collect this amount. Membership revenue is insufficient; therefore, they have to find external resources. Of the six political parties, Hizb and the RJP stated that they lack funding and have difficulty paying the rent at the end of each month.<sup>727</sup> This is mainly due to the fact that the RJP is a newly established political party and Hizb has returned to the Afghan political scene after years of fighting. Wahdat and Junbish elaborated that they do not receive enough membership fees, but donations from Afghan businessmen and the Afghan diaspora are enough to run their parties.<sup>728</sup> Based on our conversation and the argument of the representatives of the two parties, it can be concluded that both Wahdat and Junbish have better relationships with the Afghan diaspora than other political parties. A representative of Junbish told us that the leader of the party provides personal funds if there is a lack of official funding.<sup>729</sup> A representative of Jamiat stated that the party does not face financial challenges,<sup>730</sup> while Afghan Millat complained that though it receives membership fees and donations the party still faces financial challenges.<sup>731</sup>

The state has not provided any financial assistance to political parties during elections. This research discovered that neither the Ministry of Justice nor the political parties are even aware of Article 15 (4) of the Law of Political Parties, which obliges the state to provide financial assistance to political parties during elections. The state does not give political parties free airtime on national TV, but presidential candidates are provided equal time to present their platforms during elections.

However, the international community has helped the Afghan political parties in training and capacity-building. The National Democratic Institute is the principal funding recipient and implementing agency for the US, the UK, Canada, Denmark, Sweden and UNDP in dealing with political parties in Afghanistan. In 2002, National Democratic Institute programmes focused on introducing the role of political parties into the democratic system. From then onwards, the National Democratic Institute has assisted emerging parties with fundamental organisational and planning

<sup>724</sup> Interview with Shabuddin Shahab, Head of Administration and Finance, Secretariat of Jamiat-e Islami, Kabul, 7 May 2015. Also, Interview with Sayed Mohammad Sayeedi, Deputy of Junbish Mili Islam, Kabul, 4 May 2015.

<sup>725</sup> Interview with Moeen Marastial, Deputy of Right and Justice Party, Kabul, 26 April 2015.

<sup>726</sup> Interview with Moeen Marastial.

<sup>727</sup> Interview with Moeen Marastial. Also, Interview with Gul Mohammad Gulzay, Head of Finance Committee of Hizb-e Islami, Kabul, 22 April 2015.

<sup>728</sup> Interview with Mohammad Natiqi, Acting Head of Hizb-e Wahdat Mardum, Kabul, 27 April 2015.

<sup>729</sup> Interview with Sayed Mohammad Sayeedi, Deputy of Junbish Mili Islam, Kabul, 4 May 2015.

<sup>730</sup> Interview with Shabuddin Shahab. Also, Interview with Kabir Rahmani, Chief of Cultural Committee, Afghan Millat, Kabul, 7 May 2015.

<sup>731</sup> Interview with Kabir Rahmani.

principles. The National Democratic Institute's later programmes focused on the training and capacity-building of political parties on how to reach out to members, plan campaigns, and enter the electoral process.<sup>732</sup> The international community's assistance has partially helped political parties with issues related to electoral laws, campaigning and member outreach. It has also encouraged political parties to attract women and include them in leadership roles. According to the Afghanistan Analyst contributor Anna Larson, "International agencies working with parties often stipulate that women representatives be sent to training workshops, or women be offered opportunities to run for provincial council or parliamentary seats."<sup>733</sup>

**Score: 75**

### **9.1.3 Independence (law) – To what extent are there legal safeguards to prevent unwarranted external interference in the activities of political parties?**

There are general provisions in the Constitution and the Law of Political Parties to prevent state interference in the affairs of political parties. The rules to monitor the activities of political parties are reasonably designed and do not restrict the work and activities of political parties. There is no law, which authorises the state authorities to conduct surveillance on political parties, but there are no guarantees the state may not do this, because both the Constitution and the Law of Political Parties are silent on this issue.

The General Department of Registration of Political Parties and Social Associations (GDRPPSA) within the Ministry of Justice monitors adherence of political parties to the Constitution, the Law of Political Parties and other laws.<sup>734</sup> There is no provision in the Law of Political Parties that allows state representatives to participate in the meetings of political parties.

The Constitution lays down two general conditions that allow the state to dissolve a political party. Article 35 of the Constitution states that an association and a political party, which is formed according to the provisions of the law, cannot be dissolved without legal causes and the order of an authoritative court.<sup>735</sup> Laying the final authority to dissolve a political party into the hands of the courts prevents the Ministry of Justice and others in the Executive and the government from exerting pressure on political parties. The Law of Political Parties elaborates this point further and states: if a political party uses force or threatens to use force to overthrow the legal order of the country, or the party has a military organisation or affiliation with armed forces,<sup>736</sup> it can be dissolved. In addition, if a party does not have 10,000 members and offices in 20 provinces, the Ministry of Justice drops the name of the party from its registry until the party meets these requirements.<sup>737</sup>

**Score: 50**

### **9.1.4 Independence (practice) – To what extent are political parties free from unwarranted external interference in their activities in practice?**

There has not been any case of harassment, detention, arrest or attacks on any of the political parties by state authorities, rival parties or the people. However, the state has not tried to promote political parties either. President Karzai, during his 13 years of office (2001–2014) publically

<sup>732</sup> National Democratic Institute, "Afghanistan". National Democratic Institute, [www.ndi.org/afghanistan](http://www.ndi.org/afghanistan) (accessed on 10 August 2015).

<sup>733</sup> Larson, 2015: 5.

<sup>734</sup> MoJ, "Regulation on Political Parties", 2010: Article 5.

<sup>735</sup> MoJ, "Constitution", 2004: Article 35.

<sup>736</sup> MoJ, "Law on Political Parties", 2009: Article 17.

<sup>737</sup> Interview with Mohammad Naser Hafizi, Director of Department for Registration of Political Parties and Social Association, Ministry of Justice, 29 April 2015.

denounced the role of political parties in recent Afghan history<sup>738</sup> and, therefore, did not welcome their active role in the political system during his administration. The Afghan politicians, including Karzai, who oppose the increasing presence of political parties in the government and in society are influenced by the interpretation that political parties are the reason for conflict in Afghanistan. In his understanding of Afghanistan's recent history, Karzai believes that political activism and the formation of political parties led to the 1978 Communist coup and the ensuing wars.<sup>739</sup> There has been pressure on the former president Karzai, from his advisors and opponents, to establish his own political party but he has never done so.<sup>740</sup> The exclusion of political parties from the electoral process was a deliberate choice, both by Afghans and the international community,<sup>741</sup> because some political parties had a Jihadi background and they were involved in the civil war (1992–1996). The insertion of the single non-transferable vote in the Constitution and the Election Law has practically made the political parties irrelevant to the political system.<sup>742</sup>

In 2013, the director of the GDRPPSA was summoned by Mashrano Jirga and stated that 45 political parties failed to meet the requirements of the 2009 Law of Political Parties. Therefore, their names were dropped from the Ministry of Justice's registry. The Chairman of Complaints Committee of Mashrano Jirga emphasised that the parties that cannot meet the legal requirements should immediately be declared illegal.<sup>743</sup> Concerning the limiting of the activities of political parties, the Executive and the Legislative fully agree with one another. As of May 2015, 67 out of 110 parties meet the requirements of the new law and are listed on the website of the Ministry of Justice, while the remaining 43 are not recognised political parties.

Aware of his predecessors' anti-party stance, President Mohammad Ashraf Ghani promised that his administration would provide a conducive environment for the development of political parties. In a meeting with the RJP, President Ghani said that his administration would move away from an anti-party to a pro-party stance.<sup>744</sup> Since 2001, pro-party and anti-party generally refers to supporting or opposing respectively certain quotas for political parties' presence in Wolesi Jirga.

In 2013, the National Assembly rejected a draft law that reserved 33 per cent of Wolesi Jirga seats for political parties.<sup>745</sup> Since the majority of MPs do not affiliate themselves with political parties, it was difficult to pass this draft through the National Assembly. A senior leader of a political party stated that they would wait to see how far President Ghani would go to keep his promise. Though President Ghani has promised to support the role of political parties, there are doubts he will really do so.<sup>746</sup>

State authorities do not treat political parties equally and political parties' access to the Presidential Palace depends on the preferences of high-ranking government officials. The political parties, which

<sup>738</sup> Rahima Khawari, "karzai: azab-e jihadi masul ba ghudrat raseedan Taliban and huzur khariji ha hastand," Bokhdi News, <http://bokhdi.news.af/political/9784-هستند-خارجي-حضور-طالبان-و-غدرات-را-مسئول-ازاب-جہادی-کارزای> (accessed on 2 May 2015). Also see, International Crisis Group, 2013.

<sup>739</sup> Haseeb Humayoon, "The Re-election of Hamid Karzai," Institute for the Study of War, [www.understandingwar.org/report/re-election-hamid-karzai](http://www.understandingwar.org/report/re-election-hamid-karzai) (accessed on 6 June 2015).

<sup>740</sup> Scott Baldauf, "Karzai: a man with no party", The Christian Science Monitor, [www.csmonitor.com/2004/1026/p01s03-wosc.html](http://www.csmonitor.com/2004/1026/p01s03-wosc.html) (accessed on 7 June 2015).

<sup>741</sup> Larson, 2015: 3.

<sup>742</sup> Thomas Ruttiq, "Afghanistan election: political parties at the fringes again", <http://foreignpolicy.com/2010/09/13/afghanistans-elections-political-parties-at-the-fringes-again/> (accessed on 11 May 2015). Also, Larson, 2015: 6.

<sup>743</sup> Radio Azadi, "45 hizb tawanistand meyarhaye qanun azab ra takmil kunand", Radio Azadi, <http://da.azadiradio.mobi/a/24954509.html>.

<sup>744</sup> President's Office, "Raees Jamhur ba azaye haq wa adalat didar kard", President's Office, <http://president.gov.af/fa/news/37115>.

<sup>745</sup> Ayub Aruveen, "Afghanistan; ghanun entakhabat azab ra ashiya kard?" [www.bbc.co.uk/persian/afghanistan/2013/07/130721\\_k02-afg-political-parties](http://www.bbc.co.uk/persian/afghanistan/2013/07/130721_k02-afg-political-parties) (accessed on 12 May 2015).

<sup>746</sup> Interview with Mohammad Natiqi.

supported President Karzai and President Ghani during their election campaigns, were consulted and invited to ceremonial events<sup>747</sup> During the Karzai administration, Mujahidin parties, and in Ghani's administration Junbish and the RJP, and to an extent Afghan Millat, had easy access to the office of the President. The office of the CEO is open to Mujahidin parties.

## **9.2 GOVERNANCE**

**Score: 25**

### **9.2.1 Transparency (law) – To what extent are there regulations in place that require parties to make their financial information publicly available?**

The provisions to regulate the financial transparency of political parties are ambiguous. Though there is a separate chapter in the Law of Political Parties on financial affairs, it does not lay out any rules on how often a political party has to report its finances to the state. The general provisions about financial transparency are contained in Article 14 of the Law of Political Parties. It reads: "the funds and expenses of political parties shall be public and transparent."<sup>748</sup> The Law of Political Parties does not go further to require political parties to make the public aware of their financial affairs. Political parties are not obligated to report their campaign expenditures, although independent candidates are required to report four times during the two months of the election period. The Law of Political Parties does not discuss particular intervals when the parties should submit financial reports to the Ministry of Finance.

Political parties are obligated to register in the parties' financial books, the details of membership fees, donations, revenues from its properties and other donations made by members.<sup>749</sup> Each party is obligated to report private donations and government subsidies to the GDRPPSA. All financial transactions of political parties have to be conducted through its bank account.<sup>750</sup>

**Score: 0**

### **9.2.2 Transparency (practice) – To what extent can the public obtain relevant financial information from political parties?**

There are no means through which one can find out about the funds and expenses of political parties. Though political parties are obligated by law to report to the Ministry of Finance,<sup>751</sup> the Ministry of Justice does not report to the public.

For the purpose of this report, the six political parties were asked, how much money they receive from membership fees and donations. None of the parties were able to show data of their membership fees and donations. This situation has created public distrust and an opinion among the people that political parties are funded by foreign countries.<sup>752</sup>

**Score: 25**

### **9.2.3 Accountability (law) – To what extent are there provisions governing financial oversight of political parties by a designated state body?**

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<sup>747</sup> Interview with Shabuddin Shahab.

<sup>748</sup> MoJ, "Law on Political Parties", 2009: Article 14.

<sup>749</sup> MoJ, "Law on Political Parties", 2009: Article 15.

<sup>750</sup> MoJ, "Law on Political Parties", 2009: Article 15 and 16.

<sup>751</sup> Interview with Mohammad Naser Hafizi.

<sup>752</sup> For further information consult Larson, 2015: 7.

The Law of Political Parties, which is based on Article 35 of the Constitution, has designated a body to which political parties shall submit their financial reports, but the law does not discuss the issue of financial reporting intervals.

The GDRPPSA of the Ministry of Justice monitors adherence of political parties with the law,<sup>753</sup> especially the Law of Political Parties and the Regulation on Establishment and Registration of Political Parties. A political party has to register its moveable and immovable properties at the party's office and the Ministry of Finance.<sup>754</sup> There is no timetable for registration. The MoF or any other body is not authorised to request financial reports from political parties.

Each political party is also required to have a bank account through which it has to receive all its funds.<sup>755</sup> The Law of Political Parties does not elaborate on issues relating to the bank account, or the time and details of submitting a quarterly or yearly a report.

The Law of Political Parties does not contain any standard format that can be used to include the details of people donating to political parties and be submitted to the Ministry of Finance. If a political party does not fulfil its responsibilities under the Law of Political Parties and the Regulation on Establishment and Registration of Political Parties, the Ministry of Justice shall drop the name of the respective party from its registry.<sup>756</sup> This is different from dissolving a political party, which can only be done by court order. When a party meets the requirements of the law once more, its name reappears in the directory of the Ministry of Justice. In addition, the Ministry of Justice can reject the renewal of a political party if the political party breaches the Law of Political Parties and other laws governing them in the first five years.<sup>757</sup>

The Election Law does not require political parties to report to the Election Commission. There is no ceiling of expenditure for political parties. Political parties have a free hand to spend as much money as they have.

**Score: 25**

#### **9.2.4 Accountability (practice) – To what extent is there effective financial oversight of political parties in practice?**

The financial oversight of political parties remains weak. The GDRPPSA of the Ministry of Justice receives reports on the activities of political parties, but since the Ministry of Justice is neither obligated nor has the means to verify the financial reports submitted by political parties, it takes no further action upon receiving these reports. According to the director of the GDRPPSA, the Ministry of Justice “places the reports in the file of the respective party.”<sup>758</sup> Furthermore, such reports are not requested on a regular basis. According to two of the political parties interviewed, the Ministry of Justice acts on an ad hoc basis when collecting the reports.<sup>759</sup> If a party does not submit its activity reports, theoretically, its name is dropped from the directory of the Ministry of Justice, but in practice, this has never happened. This demonstrates that the Ministry of Justice does not systematically monitor the activities and reports of political parties.

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<sup>753</sup> MoJ, “Regulation on Political Parties”, 2010: Article 3.

<sup>754</sup> MoJ, “Law on Political Parties”, 2009: Article 16(3).

<sup>755</sup> MoJ, “Law on Political Parties”, 2009: Article 15(2).

<sup>756</sup> MoJ, “Regulation on Political Parties”, 2010: Article 12(6).

<sup>757</sup> MoJ, “Regulation on Political Parties”, 2010: Article 12(3).

<sup>758</sup> Interview with Mohammad Naser Hafizi.

<sup>759</sup> Interview with Moeen Marastial. Also, Interview with Shabuddin Shahab.

The political parties register their assets only once at the Ministry of Finance, i.e. when they are registered with the Ministry of Justice.<sup>760</sup> Of the six political parties here considered, only one, Jamiat, has immovable property, which is registered with the Ministry of Finance. The remaining five parties stated that they do not possess any immovable property. Despite having immovable property, Jamiat was not asked to submit financial report to the Ministry of Justice and/or the Ministry of Finance.<sup>761</sup>

**Score: 0**

**9.2.5 Integrity (law) – To what extent are there organisational regulations regarding the internal democratic governance of the main political parties?**

There are no provisions in the laws and other regulations named below, regarding internal democratic procedures, the selection of candidates and the decision-making process of political parties. The Constitution, the Law of Political Parties, the Regulations on Registration of Political Parties, the Election Law and the codes of conduct on the election are all silent about the minimal democratic procedures of political parties.

**Score: 25**

**9.2.6 Integrity (practice) – To what extent is there effective internal democratic governance of political parties in practice?**

With a few exceptions, Afghan political parties are leader-centric. Most of the leaders of the parties are not political leaders, but military commanders who have registered their military-cum-political factions into a political party.

Afghan Millat and Hizb-e Islami are the only two old parties, with recent genuine internal democratic elections for selecting their leadership. According to Gran Hewad, the above two parties “held leadership elections during the first days of October 2012. Afghan Millat chose a new leader and Hizb elected the incumbent.”<sup>762</sup> On the other hand, Jamiat did not hold its convention to elect its leadership. Instead, the leadership was selected based on the consensus of a small group.<sup>763</sup> Though Junbish and Wahdat hold formal internal elections, it is widely known that their respective leaders have de facto veto power and can decide who shall fill the party positions. According to Anna Larson, “It is perhaps unsurprising that the former anti-Soviet jihadi figureheads of parties such as Wahdat-e Islami-e Mardum (Wahdat Mardum) and Junbesh-e Milli (wa) Islami continue to hold primary authority within their party, given their reputations as military leaders and the considerable influence they still wield among their supporters as a result.”<sup>764</sup> The RJP, a newly established party, has also held yearly elections for its leadership since its establishment in 2012.<sup>765</sup> The RJP was very vocal about all important national issues before the 2014 election. Since joining the government, some of the members left the party, because of differences of opinion about the election, meaning the party has lost its momentum and it is inactive now.

The leader of a political party makes policy decisions with little consultation with other members of the party. Anna Larson wrote in March 2015 that “the rank-and-file members tend to have little say in

<sup>760</sup> Interview with Mohammad Naser Hafizi.

<sup>761</sup> Interview with Shabuddin Shahab.

<sup>762</sup> Gran Hewad, “Eyes on the Election: Two Afghan parties elect leaders,” Afghan Analyst Network, [www.afghanistan-analysts.org/eyes-on-the-election-two-afghan-parties-elect-leaders/](http://www.afghanistan-analysts.org/eyes-on-the-election-two-afghan-parties-elect-leaders/) (accessed on 7 May 2015). Also see, Larson, 2015: 9.

<sup>763</sup> Thomas Ruttig, “Temporary and Exclusive: A new leadership for Jamiat,” Afghan Analyst Network, [www.afghanistan-analysts.org/still-temporary-and-exclusive-a-new-leadership-for-jamiat/](http://www.afghanistan-analysts.org/still-temporary-and-exclusive-a-new-leadership-for-jamiat/) (accessed on 24 June 2015).

<sup>764</sup> Anna Larson, 2015: 7.

<sup>765</sup> Interview with Moeen Marastial.



party decision making.”<sup>766</sup> All political parties have formal procedures to select candidates for elections. In practice, however, it is the leaders of the political parties who decide who should run for parliamentary and provincial elections.<sup>767</sup>

### 9.3 ROLE

Score: 25

#### 9.3.1 Interest aggregation and representation – To what extent do political parties aggregate and represent relevant social interests in the political sphere?

No matter what the ideology or history of a political party, they are run as patronage networks, or at best, represent the interests of a particular ethnic community. Nonetheless, there are three types of parties with distinct political ideology: the Islamists, ethnic/linguistic nationalists, and leftists.<sup>768</sup>

Jamiat was established in 1953 as an Islamist party, but in recent years, it has been dominated by ethnic Tajiks. Hizb, which splintered from Jamiat in 1973, is dominated by ethnic Pashtuns. According to a founding member of Hizb, the two Islamist parties are “two branches of a single trunk” with no ideological difference.<sup>769</sup> There are two dozen other Islamist parties with no remarkable popular support and ideological distinction from the two main Islamist parties.

Afghan Millat was established as the Afghanistan Social Democratic Party in 1966, having constituency throughout Afghanistan, but was mainly dominated by Pashtuns. Junbish is an Uzbek nationalist party established in 1992. Wahdat represents the identity and interests of ethnic Hazaras. The two nationalist parties possess strong popular support among their ethnic communities. There are a dozen other ethnic/linguistic nationalist parties with no distinction from the nationalist parties, but which continue to exist because they are headed by a different leader. Furthermore, there are two dozen leftist parties with no distinct ideological difference. They do not have popular support, but they continue to exist, because each party is centred on a distinct person. The RJP was established in 2012. It is a centre-left party with some national support.

For most people, political parties do not have any meaning and value. People still remember the brutality and horrific tortures of Communist parties (1979–1992) and the civil war between the Islamist parties (1992–1996). According to one observer, when the Islamist parties came to power, they earned, “a reputation for brutality and military excess during a destructive civil war.”<sup>770</sup> However, the followers of these political parties see the history and the current stance of their political parties as legitimate and for the good of the country.

Even though Afghanistan has a long history of political parties, Afghan political parties have a long way to becoming institutionalised political organisations. According to a political analyst, this does not mean that Afghan people do not have the capacity to develop such parties. Wars, rapid regime changes and suppression by the state have not allowed the emergence of such parties. According to the same analyst, if Afghanistan were given the chance to breathe for 20 years, institutionalised and nationwide political parties would emerge.<sup>771</sup>

In addition to each political party’s relations with the CSOs, the Afghanistan Civil Society Forum has been holding joint conferences between CSOs and political parties since 2007. Issues like the Election Law, the single non-transferable vote, and other common issues are discussed in these

<sup>766</sup> Larson, 2015: 6.

<sup>767</sup> Larson, 2015: 6.

<sup>768</sup> Thomas Ruttig, “Islamists, Leftists—and a Void in Centre,” Konrad Adenauer Stiftung (2006): 1–2.

<sup>769</sup> Interview with Gul Mohammad Gulzay.

<sup>770</sup> Larson, 2015: 3.

<sup>771</sup> Interview with Abdul Ghafoor Liwal, Director of Regional Studies Center of Afghanistan, Kabul, 29 April 2015.

conferences.<sup>772</sup> Political parties and CSOs have also held joint conferences, in which they expressed their views regarding government policies. In 2013, dozens of political parties and CSOs proposed a package of conditions to the state ensuring a transparent election in 2014.<sup>773</sup>

**Score: 25**

### **9.3.2 Anti-corruption commitment – To what extent do political parties give due attention to public accountability and the fight against corruption?**

Corruption is so pervasive in Afghanistan that it is a common platform for every political party. However, none of the political parties have taken any practical steps to help the government to fight corruption or to hold public awareness campaigns.

At the Tokyo Conference in 2012 the international community agreed to award further grants to Afghanistan, but conditioned their aid with a commitment from the Afghan government to perform in areas of accountability and fighting corruption. Following this conference, the RJP praised the international community's new approach and urged the government to demonstrate its political will to fight corruption.<sup>774</sup> However, the RJP did not provide concrete suggestions and recommendations on how to fight corruption. Usually, the Afghan political parties criticise the government without providing constructive recommendations.

After the Tokyo Conference, President Karzai issued Order No. 45, obligating all state organs to take a series of steps to fight corruption. The head of the largest political affiliation in the country, i.e. Jabha Milli (a conglomeration of Jamiat, Wahdat, and Junbish) criticised the presidential order and insisted that it is not possible to fight corruption by issuing an order.<sup>775</sup> At the same time, they were not able to suggest an alternative way to fight corruption.

Though other political parties did not field presidential candidates, the two frontrunners who were supported by political parties declared the fight against corruption as their top priority. In his election manifesto, Ashraf Ghani, who was supported by Junbish, RJP and Afghan Millat, discussed ways to tackle corruption at length.<sup>776</sup> Other leading presidential candidates also referred to the issue of corruption in their campaign speeches and outlined their plans in their manifestos to fight corruption. Abdullah Abdullah, who had the support of Hizb, Wahdat and Jamiat, referred to the fight against corruption as his second top priority after he officially declared his candidacy for the presidency.<sup>777</sup>

#### **Recommendations:**

- The Constitution and other laws should be amended to clearly articulate the role of political parties within the state structure of Afghanistan.
- The government should consider changing the electoral system from the single non-transferable vote to proportional representation, in order to strengthen the link

<sup>772</sup> Partu Naderi, "neshast-e namayandgan azab wa jamea madani", Afghanistan Civil Society Forum, [www.acsf.af/index.php?option=com\\_content&view=article&id=403:2011-06-29-04-42-52&catid=13&Itemid=18](http://www.acsf.af/index.php?option=com_content&view=article&id=403:2011-06-29-04-42-52&catid=13&Itemid=18) (accessed on 3 May 2015).

<sup>773</sup> BBC Persian, "Bast-e peshnahadi azab wa jama madani dar murid entikhabat", BBC Persian, [www.bbc.co.uk/persian/afghanistan/2012/10/121017\\_k02-parties-election.shtml](http://www.bbc.co.uk/persian/afghanistan/2012/10/121017_k02-parties-election.shtml) (accessed on 3 May 2015).

<sup>774</sup> Radio Azadi, "Baraye mubareza ba fasad wa masaref dageg kumakha erada seyasi zarurat ast", Radio Azadi, [www.wahdatnews.com/farsi/?p=16512](http://www.wahdatnews.com/farsi/?p=16512) (accessed on 3 May 2015).

<sup>775</sup> The Daily Afghanistan, "Ahamd Zia Masud: mubareza ba fasad bayad az mughamat beland rutba hukumat aghaz gardad", The Daily Afghanistan, [www.dailyafghanistan.com/national\\_detail.php?post\\_id=125392](http://www.dailyafghanistan.com/national_detail.php?post_id=125392) (accessed on 3 May 2015).

<sup>776</sup> Mohammad Ashraf Ghani, Election Platform of Change and Continuity Team, [www.afghanasamai.com/Dscutions-politicalculture/afghanasamai%202014/Elections-Candidat-Tahawol-wa-Tadaom-1.htm](http://www.afghanasamai.com/Dscutions-politicalculture/afghanasamai%202014/Elections-Candidat-Tahawol-wa-Tadaom-1.htm) (accessed on 12 May 2015).

<sup>777</sup> Mohammad Shah Amini, "Muhimtarin team wared entikhabat shud", Wahdat News, [www.wahdatnews.com/farsi/?p=16512](http://www.wahdatnews.com/farsi/?p=16512) (accessed on 24 April 2015).

between political parties and elections and to minimise the influence of patronage networks in the political system. However, such changes should only occur alongside more structural changes to allow for party-based interest groups within the National Assembly and the institutionalisation of political parties based on political ideology rather than ethnic divisions.

- The Law of Political Parties needs to be amended to require political parties to account for their expenditure and to publish financial reports on a regular basis, in line with international standards.
- Political parties should move from ethnic representation and articulate political ideologies that appeal to all groups in the country.
- Jihadi political parties should transform themselves from military organisations into political and democratic institutions.

## 10. THE MEDIA

### Summary

The Afghan media is ranked higher than all other countries in the region, including India, in terms of freedom of information by the Reporters Without Borders World Press Freedom Index. Afghanistan has passed four media laws in the last decade, the last law being the most progressive. However, there are discrepancies between the law and practice. State agencies have been found to have violated the law to control the media, but journalists have successfully resisted government restrictions and interference.

The Ghani administration has promised to support the media, has signed the Access to Information Law, and appointed two former journalists as ministers. On the other hand, the government has reduced access to information by dissolving the position of provincial police spokespersons. Therefore, there are mixed signals about the new administration's relation with the media.

However, the main threat to the media is not the government, but financial sustainability. Due to limited financial resources, a significant number of independent media outlets had to shut down.

### Structure and organisation

There are about 1500 print media outlets, 150 radio stations, 70 TV stations, 9 news agencies, more than 5000 blogs and websites, and a few dozen publishing houses in Afghanistan.<sup>778</sup> The largest media outlets are Moby Media Group, Ariana Group, Killid Group and Salam Watandar. Although the exact number of journalists is not available through media watchdog organisations, according to our interview, there are around 7000 to 10,000 journalists in the country.<sup>779</sup> Among all the media outlets, print media has the smallest audience. Daily TV audiences are around 35 per cent of the population, while radio is more popular at 54 per cent. Internet usage is only 4 per cent.<sup>780</sup>

There are joint government and non-government regulatory agencies for the media. The High Council of Media (HCM), which is comprised of 13 members, including five non-state individuals,<sup>781</sup> is the highest joint regulatory agency. According to the 2009 Mass Media Law (MML), the Media Violation Investigation Commission (MVIC) should have been eliminated and the Mass Media Commission (MMC) should have been established. However, the government decided to retain the MVIC until May 2015 and not establish the MMC.

The Ministry of Information and Culture has registered five journalist unions and organisations. These unions are mandated to defend the rights of journalists in Afghanistan.<sup>782</sup> Afghanistan's National Journalists Union (ANJU) and the Afghan Journalists Safety Committee are the most popular organisations. The Journalists' Federation is an umbrella organisation that coordinates the activities of journalist unions.

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<sup>778</sup> BBC Persian, "Wazir farhang: rasana ha gharwabasta ru be sughut and", BBC Persian, [www.bbc.co.uk/persian/afghanistan/2013/06/130615\\_k03\\_afghan\\_media\\_failing](http://www.bbc.co.uk/persian/afghanistan/2013/06/130615_k03_afghan_media_failing) (accessed on 4 June 2015).

<sup>779</sup> Interview with Sediqullah Tawhidi, Head of Media Watch at Nai and Head of Provincial Department at Afghanistan's National Journalists Union, Kabul, 28 May 2015.

<sup>780</sup> Internews, "Media Landscape in Afghanistan," Internews, <http://data.internews.org/af-media/data/> (accessed on 2 July 2015).

<sup>781</sup> Ministry of Justice, "Mass Media Law", Official Gazette 986 (1388AH [2009]): Article 41.

<sup>782</sup> BBC Persian, "Wazir farhang: rasana ha gharwabasta ru be sughut and", BBC Persian, [www.bbc.co.uk/persian/afghanistan/2013/06/130615\\_k03\\_afghan\\_media\\_failing](http://www.bbc.co.uk/persian/afghanistan/2013/06/130615_k03_afghan_media_failing) (accessed on 4 June 2015).

## Assessment

### 10.1 CAPACITY

Score: 75

#### 10.1.1 Resources (law) – To what extent does the legal framework provide an environment conducive to a diverse independent media?

The procedures to obtain a broadcasting licence are not restrictive. There can be a lengthy process, however, since the law does not specify a time period in which a licence has to be issued. The electronic media has to obtain a licence before broadcasting, while a print media outlet can start publishing without a licence, provided that it applies for a licence two weeks after its first publication.<sup>783</sup> The law also includes an appeal process, in case of disagreement with the decision of the Ministry of Information and Culture. If a media entity is rejected a licence and it believes the rejection is unfair, it can first refer the issue to the relevant commission, and if still not satisfied, it can appeal to the courts.<sup>784</sup>

The MML allows all forms and types of media, i.e., electronic media (radio, TV, websites) and print media. The citizens of the country, political parties, social associations, domestic NGOs, private companies, and government institutions can establish electronic and print media. The MML creates a pluralistic environment to allow social and commercial organisations to establish media outlets and requires all the media to broadcast the view of both sides of an issue.<sup>785</sup>

The Afghan MML promotes diversity and stipulates that the state is obligated to support the promotion of independent media. However, according to the legal advisor of the Ministry of Information and Culture, this support does not include financial assistance.<sup>786</sup> The lack of financial support for media, especially print media is a problem, because in a country such as Afghanistan where the literacy rate is very low, print media cannot survive financially without government support.

There is no restriction to entering journalism as a profession. The state and private universities offer journalism courses in the capital and the provinces. The majority of journalists in Afghanistan are graduates of these academic institutions.

Score: 25

#### 10.1.2 Resources (practice) – To what extent is there a diverse independent media providing a variety of perspectives?

As stated in the Structure and organisation section, there are 70 private TV and 150 radio stations, and thousands of print outlets in Afghanistan. Reviewing the media directory on the Nai website<sup>787</sup>, half of the TV stations are located in the capital, while 20 of them are in Balkh and Herat. The 15 remaining media outlets are in the remaining 31 provinces. Therefore, around a dozen provinces do not have local state TV or private stations. State TV has local stations in 22 provinces. While one-

<sup>783</sup> MoJ, "Mass Media Law", 2009: Article 10(6).

<sup>784</sup> MoJ, "Mass Media Law", 2009: Article: 35.

<sup>785</sup> MoJ, "Mass Media Law", 2009: Article 40.

<sup>786</sup> Interview with Dellawar Wazirsoy, Advisor of Ministry of Information and Culture, Kabul, 1 June 2015.

<sup>787</sup> Nai, "Media Director," Nai, <http://nai.org.af/media-directory> (accessed on 1 July 2015).

third of radio stations are in Kabul, there is at least one radio station in each province. According to Internews, 73 per cent of the population own a radio, while 47 per cent own a TV.<sup>788</sup>

These media outlets represent the political, religious and ethnic spectrum of the country. Each of the four largest ethnic groups, i.e. Pashtuns, Tajiks, Hazaras and Uzbeks, have at least a dozen electronic and print media voicing their respective ethnic perspectives and defending their rights. However, in terms of rural and urban representation, the media in Afghanistan is largely run by and for the urban dwellers. In spite of the last decade's rural migration to urban areas, 78 per cent of Afghans still live in the villages.<sup>789</sup> All Afghan radio stations, except one with limited audience, broadcast on FM frequencies, which do not reach remote villages.<sup>790</sup> Foreign radio stations such as BBC Pashto/Dari, VOA Pashto/Dari, and radio stations from France, Germany and Iran are available on AM and FM frequencies. Unlike FM, AM signals reach many places in Afghanistan. The Afghans listen to the AM radio stations in their villages, but, according to Nai, foreign radio stations such as VOA and Iranian radio do not present an objective view in their reporting.

Journalism in the country began to prosper around the same time as media outlets started to emerge. As mentioned before, since 2001, 7 to 10 thousand journalists have begun their career in the media covering various areas. There has been significant improvement in the capacity-building of journalists by national organisations like Nai, and international organisations such as Mediothek. Nai has a media institute, which offers two-year diplomas in journalism, in addition to short courses on the essentials of journalism, radio journalism and investigative journalism, among others. Nai also has a radio where it trains interns. Mediothek, on the other hand, focuses on workshops and short-term training. It has held around 40 workshops, each of them attended by at least a dozen journalists on a wide range of subjects, such as conflict-sensitive journalism, media, peace journalism and social responsibility in the media, among others. In spite of such improvements, Sediqulla Tawhidi, the Executive Director of Media Watch at Nai, who has monitored media for the last 10 years, believes that there is a need to improve the capacity and promote professionalism among journalists.<sup>791</sup>

During the past few years, with a few exceptions, all media outlets in Afghanistan have reported financial losses.<sup>792</sup> It is expected that in the following years, many media outlets will disappear, because of a lack of resources. The print media is more affected by the lack of access to resources. Several print outlets have already shut down.<sup>793</sup> In the last decade, independent media outlets have been funded by the international community and political and ethnic media by their respective communities. Since Afghanistan's economy has slowed down and donor support has decreased for the media, there is a serious threat to the sustainability of media in Afghanistan. In fact, one could say the biggest threat to media is not insecurity, but financial sustainability. Sediqulla Tawhidi shared the same opinion regarding the financial status of the media.<sup>794</sup>

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<sup>788</sup> Internews, "Media Landscape in Afghanistan," Interviews, <http://data.internews.org/af-media/data/> (accessed on 4 June 2015).

<sup>789</sup> Internews, "Media Landscape in Afghanistan," Interviews, <http://data.internews.org/af-media/data/overview/> (accessed on 4 June 2015).

<sup>790</sup> Interview with Sediqullah Tawhidi.

<sup>791</sup> Interview with Sediqullah Tawhidi.

<sup>792</sup> Aziz Hakimi, "Rasanahaye azada wa chalesha ye azadi rasana ha dar afghanistan", BBC Persian, [www.bbc.co.uk/persian/afghanistan/2013/06/130615\\_zs\\_afghan\\_media\\_freedom\\_raheen](http://www.bbc.co.uk/persian/afghanistan/2013/06/130615_zs_afghan_media_freedom_raheen) (accessed on 4 June 2015).

<sup>793</sup> Abdul Mujeeb Khalwatgar, "Freedom of Expression Under Threat in Afghanistan", *Stability: International Journal of Security and Development*, 3 (2014): 2, [www.stabilityjournal.org/articles/10.5334/sta.el/](http://www.stabilityjournal.org/articles/10.5334/sta.el/) (accessed on 4 June 2015).

<sup>794</sup> Interview with Sediqullah Tawhidi.



**Score: 75**

**10.1.3 Independence (law) – To what extent are there legal safeguards to prevent unwarranted external interference in the activities of the media?**

There are safeguards in the MML to prevent external interference in the affairs of the media, but there are also ambiguous provisions in the same law that can be used by the state to interfere in the work of media outlets. Article 34 of the Constitution states that “freedom of expression is inviolable.”<sup>795</sup> This, along with other provisions of this article, has been the source of free press and the defence of journalism in the last decade in Afghanistan. Article 34 also states that every Afghan shall have the right to print and publish without prior submission to state authorities.<sup>796</sup> The existence of the MML further ensures freedom of expression and access to information.

Since 1965, Afghanistan has had a total of seven media laws, four since 2001. The MML, which came into being in 2009, is the most progressive among all media laws. The fact that the government is ready to amend media laws to make them more progressive indicates the government’s willingness to support free press and media activities in the country.

Applying for a broadcasting licence is a non-political process. It is issued by the Ministry of Information and Culture and is conditioned on technical aspects. An applicant is requested to declare the objectives, the amount of investment, and the details pertaining to ownership.<sup>797</sup> Each media entity shall have an owner and an editor-in-chief. Article 39 of the MML states that the editor-in-chief is responsible for materials that are broadcast through his/her respective media.<sup>798</sup> From Article 39 of the MML, it can be inferred that since the editor-in-chief is held responsible for publication, that he also has the authority to make decisions about the content of the published material.

The law prohibits censorship or interference in the affairs of the media by the government, non-governmental agencies and individuals.<sup>799</sup> This provision helps journalists and media owners to defend their right to a free and independent press. The law further ensures the safety of the people who inform journalists. Journalists/reporters have the right to withhold their sources of information unless an authoritative court requests its disclosure.<sup>800</sup>

In spite of such liberal provisions, there are articles that require the media to broadcast certain programmes and adhere to specific principles, and which provide a list of materials that are prohibited from being published. Article 25 of the MML requires the electronic media to include issues of Islam, moral values, health and environment, and the harms of producing and using narcotics in their educational programmes.<sup>801</sup> These are some of the top areas in Afghan society that require public attention.

The electronic media are also obligated to broadcast the call to prayers five times a day and observe the holy days of Islam and the month of Ramadan.<sup>802</sup> Article 25 is not objected to by the media, because there is a general consensus in the society about the importance of these issues. Even in

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<sup>795</sup> MoJ, “Constitution”, 2004: Article 34.

<sup>796</sup> MoJ, “Constitution”, 2004: Article 34.

<sup>797</sup> MoJ, “Mass Media Law”, 2009: Article 33.

<sup>798</sup> MoJ, “Mass Media Law”, 2009: Article 39.

<sup>799</sup> MoJ, “Mass Media Law”, 2009: Article 4(2).

<sup>800</sup> MoJ, “Mass Media Law”, 2009: Article 6(2).

<sup>801</sup> MoJ, “Mass Media Law”, 2009: Article 25(1).

<sup>802</sup> MoJ, “Mass Media Law”, 2009: Article 25(2).

our interviews with Hasht-e Subh and Nai, there were no references to the notion that Article 25 restricted their freedom.

Article 45 of the MML allows the government and individuals to easily file complaints against journalists. Article 45 prohibits the broadcast and publication of materials that are against Islam, defamatory to an individual, and harmful to public security and well-being, among others.<sup>803</sup> These provisions are at best ambiguous and open to abuse by the government and NGOs. Reviewing around a hundred cases documented by Nai<sup>804</sup> related to the summoning of journalists and editors to the Ministry of Information and Culture and other government agencies, this report found that Article 45 has been the most cited source of justification for complaints.

Articles 436 to 440 of the Penal Code of Afghanistan are about libel and deal with the act of defamation and related punishments. Defamation is defined as, “attribution of an incident to someone through a media means in a way if it were true the person who was accused would have been punished or degraded in the eyes of the public.”<sup>805</sup> If a libellous allegation is proved in the court of law, it is punishable with a maximum of two years in prison or a fine of no less than 10,000 AFN and not more than 20,000 AFN.<sup>806</sup> It is worth mentioning that the Penal Code of Afghanistan dates back 40 years and does not cover issues of defamation in social media.

## **Score: 25**

### **10.1.4 Independence (practice) – To what extent is the media free from unwarranted external interference in its work in practice?**

Attempted interference by state and non-state actors is common in the work of the media although the media has successfully resisted cases of interference in their affairs. The MVIC was established according to the 2005 MML. The 2005 MML was abrogated in 2009 but the Executive kept the MVIC. Since the MVIC was chaired by the Minister of Information and Culture, it could not be considered independent. Journalists and editors were repeatedly summoned to the MVIC for explanations and usually asked to apologise for their reporting. Najiba Ayubi, the Executive Director of Killid Group was summoned four times to this commission. In a recent case, her media outlets reported a brawl between two powerful MPs’ bodyguards. The MPs denied the brawl and pressured the Minister of Information and Culture to summon Ms Ayubi. According to Ms Ayubi, in the meeting, where the two MPs were also present, the Minister asked her to apologise but she showed the evidence instead and did not apologise.<sup>807</sup> Her case was closed and not forwarded to the AGO.

Intimidation, harassment and the beating of journalists are very common in the country. In the last five years, cases of violence against journalists have doubled. In 2010, there were 58 cases of violence, but in 2013, this reached 76.<sup>808</sup> In the following year, violence against journalists increased to an unprecedented level. 2014 was the worst year for journalists in Afghanistan. Eight were killed, nine injured, 20 arrested, 38 beaten and 50 cases of insult and harassment were registered.<sup>809</sup> The increase in violence against journalists is attributed to the withdrawal of foreign forces from Afghanistan and the increased insurgency in the country. Since 2001, Nai has registered 44 cases of killings<sup>810</sup> and more than 450 cases of violence against journalists since 2004.<sup>811</sup> Most violations

<sup>803</sup> MoJ, “Mass Media Law”, 2009: Article 45.

<sup>804</sup> Nai “Khabarnegaran dar Afghanistan 1383–1389,” Nai (1389AH [2010]).

<sup>805</sup> MoJ, “Penal Code”, 1976/1977: Article 436.

<sup>806</sup> MoJ, “Penal Code”, 1976/1977: Article 437.

<sup>807</sup> Interview with Najiba Ayubi, Director of Killid Group, Kabul, 4 June 2015.

<sup>808</sup> Nai Monthly, “Sal 2014 khuneen tareen saal baraye khabarnegaran dar afghanistan,” Nai Monthly 3 (2014): 1.

<sup>809</sup> Nai Monthly, “Sal 2014 khuneen tareen saal baraye khabarnegaran dar afghanistan,” Nai Monthly 3 (2014): 1.

<sup>810</sup> Interview with Sediqullah Tawhidi.

happen when journalists ask government officials for information. According to Abdul Mujeeb Khalwatgar, “this is a depressingly common occurrence.”<sup>812</sup> More alarmingly, the government has not prosecuted cases of violence against journalists. Sediqulla Tawhidi, the Executive Director of Media Watch at Nai, stated that many of the cases of violence have happened within the territory that is under the control of the state and the state was able to prosecute these cases but it ignored them.<sup>813</sup>

Considering the above circumstances, self-censorship is common practice, especially in areas outside the capital. According to Human Rights Watch, “Afghan journalists often respond to dangers with self-censorship.”<sup>814</sup> Though journalists in the provinces are more often subjected to violence and intimidation, there are also reports of retaliation in the capital. In 2015, a media entity located in Kabul delayed the publication of an investigative report, because some powerful government officials were named as culprits.<sup>815</sup>

Government censorship is not as common but there have been attempts by government officials to dictate to the media. According to Freedom House, Afghanistan has seen “a decrease in legal harassment and censorship.”<sup>816</sup> But there are still high profile cases of censorship. In the case of the MPs’ bodyguards brawl, the secretary of the Ministry of Information and Culture called Killid Group to stop the broadcast of the event.<sup>817</sup> In another case, in which Killid Group ran a report on a police chief who had allegedly grabbed a piece of land in Kabul, the police chief came to the media office in question to stop the broadcast.<sup>818</sup> However, in both these cases, and several others, the media have resisted the state and non-state actors who have tried to impose censorship on the media.

## 10.2 GOVERNANCE

### Score: 25

#### 10.2.1 Transparency (law) – To what extent are there provisions to ensure transparency in the activities of the media?

Provisions related to transparency of ownership and objectives of the media are laid down in the MML, and the MML requires all media entities to register the owner of the media outlet, objective of the enterprise, name of the media outlet, address of the office, amount of investment and the source of funding with the Ministry of Information and Culture.<sup>819</sup> The provision is especially intended to disclose the real owners of the media. However, the Ministry of Information and Culture is not required to make information regarding the media public. Registered media outlets are required to report to the Ministry of Information and Culture any change of address, amendments in the charter,

<sup>811</sup> Abdul Mujeeb Khalwatgar, “Freedom of Expression Under Threat in Afghanistan,” *Stability: International Journal of Security and Development* 3 (2014): 1, [www.stabilityjournal.org/articles/10.5334/sta.el/](http://www.stabilityjournal.org/articles/10.5334/sta.el/) (accessed 4 June 2015).

<sup>812</sup> Abdul Mujeeb Khalwatgar, “Freedom of Expression Under Threat in Afghanistan,” *Stability: International Journal of Security and Development*, 3 (2014): 1, [www.stabilityjournal.org/articles/10.5334/sta.el/](http://www.stabilityjournal.org/articles/10.5334/sta.el/) (accessed 4 June 2015).

<sup>813</sup> Interview with Sediqullah Tawhidi.

<sup>814</sup> Human Rights Watch “Stop Reporting or We’ll Kill Your Family,” Human Rights Watch (2015): 2, [www.hrw.org/sites/default/files/reports/afghanistan\\_0115\\_ForUpload.pdf](http://www.hrw.org/sites/default/files/reports/afghanistan_0115_ForUpload.pdf) (accessed on 4 June 2015).

<sup>815</sup> Interview with a media outlet, details withheld on request, Kabul, 2 June 2015.

<sup>816</sup> Freedom House, “Freedom of Press 2014: Afghanistan,” Freedom House, <https://freedomhouse.org/report/freedom-press/2014/afghanistan#.VccIMLXhEdV> (accessed on 9 August 2015).

<sup>817</sup> Interview with Najiba Ayubi.

<sup>818</sup> Interview with Najiba Ayubi.

<sup>819</sup> MoJ, “Mass Media Law”, 2009: Article 33.

and cessation of activities.<sup>820</sup> The media are not required to disclose information related to their internal staff or disclose and publish their editorial policies.

**Score: 25**

**10.2.2 Transparency (practice) – To what extent is there transparency in the media in practice?**

Media outlets are not transparent in issues pertaining to their ownership, financial resources and editorial policies. The media declare their ownership to the Ministry of Information and Culture at the time of registration and this is available in the Publication Directorate of the Ministry of Information and Culture. None of the electronic media declare their ownership through their own sites. There are few print media outlets which have declared their ownership. The media does not inform the public about its internal work or about internal staff and editorial policies.

**Score: 50**

**10.2.3 Accountability (law) – To what extent are there legal provisions to ensure that media outlets are answerable for their activities?**

There are legal provisions to ensure the accountability of the media. The MML of 2009 established two commissions as regulatory organs to regulate both government and non-governmental media. The HCM is a 13-member body mandated to prepare the mass media policy and the national TV and radio budget, and propose members of the MMC to the President.<sup>821</sup> The five non-government members in the HCM ensure that the voice of the media is also heard in the commission.

A seven-member commission made of professional non-state actors was to be established under the HCM.<sup>822</sup> It would have had the authority to monitor the day-to-day activities of the media. It would also have had the mandate to review applications for new media outlets and propose them to the Ministry of Information and Culture for the registration process.<sup>823</sup> The MMC would have had a mandate to monitor mass media activities, review complaints against media and refer complaints of a criminal nature to the judicial organs.<sup>824</sup> However, the MMC was never established.

The MML of 2009 abrogated the 2005 MML, but President Karzai issued an executive order to retain the MVIC of the 2005 MML. Wolesi Jirga overwrote the President's executive order, but the President kept the MVIC and it continued to function until May 2015.<sup>825</sup> Under President Ghani, the Ministry of Information and Culture dismantled the MVIC in May 2015. Currently, the Ministry of Information and Culture and the HCM are working together to establish the MMC.<sup>826</sup>

All media outlets are required to give the citizens the right to reply to any of their reports or broadcasts. While the MML is silent about the obligations of the media to correct erroneous information, a real or legal person who is attacked by the media and whose personality, reputation and material interests are damaged, has the right to refute it in the same media outlet.<sup>827</sup> The legal provision that guarantees the right to reply for citizens who are criticised in the media is intended to

<sup>820</sup> MoJ, "Mass Media Law", 2009: Article 49.

<sup>821</sup> MoJ, "Mass Media Law", 2009: Article 41.

<sup>822</sup> MoJ, "Mass Media Law", 2009: Article 42.

<sup>823</sup> MoJ, "Mass Media Law", 2009: Article 43(1).

<sup>824</sup> MoJ, "Mass Media Law", 2009: Article 43.

<sup>825</sup> Human Rights Watch, "Stop Reporting or We'll Kill Your Family," Human Rights Watch (2015): 3, [www.hrw.org/sites/default/files/reports/afghanistan\\_0115\\_ForUpload.pdf](http://www.hrw.org/sites/default/files/reports/afghanistan_0115_ForUpload.pdf) (accessed on 4 June 2015).

<sup>826</sup> Interview with Dellawar Nazirzoy, Advisor of Ministry of Information and Culture, Kabul, 1 June 2015.

<sup>827</sup> MoJ, "Mass Media Law", 2009: Article 7.

prevent damages to the reputation of citizens. The request to refute criticism, an allegation or information should be submitted in writing no later than 90 days after publication or broadcast.<sup>828</sup> The respective media entity is obligated by law to publish the reply without delay, free of charge and in the same or the following edition.<sup>829</sup> However, this provision is not well publicised, either by the government or the media themselves. Therefore, the citizens are not aware of such a right.

**Score: 25**

#### **10.2.4 Accountability (practice) – To what extent can media outlets be held accountable in practice?**

The government and media have had very difficult relations in the last decade, because there is ambiguity in the MML. At present, there is no authorised organ of state to oversee the activities of the media because the MVIC was dissolved in 2015 and the MMC has yet to be established. This does not mean, however, that government agencies do not oversee media activities, even beyond their legal mandate. The Judiciary, the National Directorate of Security, the AGO and the Ministry of Information and Culture summon journalists for explanations and apologies, and at times proceed with criminal cases against them,<sup>830</sup> even though none of the four agencies mentioned are authorised by law to request explanation from journalists and the media.

While the state summons media outlets for explanations, government agencies do little to check the financial transparency of the media. Media outlets submit yearly financial reports to the Ministry of Finance and the HCM, but the reports are not verified. According to an expert, there are media outlets whose income is far less than their expenditures, but they function in full sway due to undisclosed foreign funds. The government has done little in this regard.<sup>831</sup> There are allegedly foreign countries that provide funds to the media inside Afghanistan to promote their interests, especially Afghanistan's neighbours.<sup>832</sup> Furthermore, one media expert stated that out of the two dozen radio stations in his province, the majority of them submit fake and false financial reports to evade taxes.<sup>833</sup> The Ministry of Finance and the HCM have failed to properly verify these financial reports.

There are some forums for editors and reporters to interact regarding the collection and dissemination of news. The media outlets use social networks, especially Facebook, to receive people's feedback and let the public express its opinions regarding media reporting and programmes through the same networks. While the media corrects erroneous information with apologies and gives the citizens the right to reply to an issue relating or referring to them without an indication by external agencies, none of the media has ombudsmen or disciplinary committees. It is the editor/owner of the media outlet who decides over cases of violation of code of conducts and such issues.<sup>834</sup>

**Score: 25**

#### **10.2.5 Integrity mechanisms (law) – To what extent are there provisions in place to ensure the integrity of media employees?**

<sup>828</sup> MoJ, "Mass Media Law", 2009: Article 7.

<sup>829</sup> MoJ, "Mass Media Law", 2009: Article 7.

<sup>830</sup> Nai, "khabarnegaran dar Afghanistan 1383–1389", Nai (1389AH [2010]).

<sup>831</sup> Interview with Sediqullah Tawhidi.

<sup>832</sup> Aziz Hakimi, "Rasanahaye azada wa chalesha ye azadi rasana ha dar afgahnistan", BBC Persian, [www.bbc.co.uk/persian/afghanistan/2013/06/130615\\_zs\\_afghan\\_media\\_freedom\\_raheen](http://www.bbc.co.uk/persian/afghanistan/2013/06/130615_zs_afghan_media_freedom_raheen) (accessed on 4 June 2015).

<sup>833</sup> Interview with Faisal Karimi, Assistant Professor of Journalism, Herat University, Kabul, 4 June 2015.

<sup>834</sup> Interview with Najiba Ayubi, Director of Killid Group, Kabul, 4 June 2015.

There is no single or national code of conduct that is recognised by all media outlets. There are, however, some individual codes of conduct developed by media outlets themselves. There are no ethics committees within the media outlets. However, there have been several attempts by government and non-government organisations to prepare and publish a sector-wide code of conduct for the media. The Media Law Working Group, which includes major media outlets, having studied the code of conduct of 12 countries, including Egypt and France, came up with a code of conduct that is compatible with the context and situation in Afghanistan. In spite of improvements in preparing the legal documents, the code of conduct faces implementation challenges. According to Nai, the Ministry of Information and Culture wanted to use such a national code of conduct against journalists, leading to Nai withdrawing its support.<sup>835</sup> The Ministry of Information and Culture continued to launch the code of conduct. Since this is the government's code of conduct for the media, the independent media does not support or follow it.

There have been similar attempts by some journalist unions and supporting agencies similar to Nai to come up with a code of conduct, but these have not received nationwide recognition. In a recent gathering (2015) of hundreds of journalists in Kabul, the existence of a sector-wide and national code of conduct was identified as one of the top priorities for the media in Afghanistan.<sup>836</sup> However, the journalist community is divided and media outlets are so diverse that the possibility of a national code of conduct that is acceptable to all media outlets does not seem realistic.

## **Score: 25**

### **10.2.6 Integrity mechanisms (practice) – To what extent is the integrity of media employees ensured in practice?**

There are issues with professionalism and the integrity of journalists in the country. Since there is no dedicated organisation to monitor media ethics, some media outlets report that they are monitoring their own staff to follow integrity principles. For example, the Killid Group (with 300 staff members) and Hasht-e Subh (with 70 staff members) state that the editors in their organisations are in charge of ensuring the integrity of the journalists.

There are very few cases of journalists, especially at the provincial level, who have not followed the procedure to declare when they have received gifts and other forms of hospitality.<sup>837</sup> There are no cases where disciplinary actions have been taken against a journalist, because there is neither a code of conduct nor a state or non-state agency to monitor it.

There is no organisation that gives integrity training to journalists and provides an oversight function to ensure media ethics. However, there are organisations that defend the rights of journalists. Nai is the largest and most popular organisation, which has documented threats against the media and journalists since 2004. It monitors access to information and lobbies for better a legal framework. The Afghan Journalists Safety Committee is also an organisation working in the area of defending journalists.

Although it is common practice among the majority of media outlets to rely on multiple sources and report an issue from multiple angles, reporting and programmes are biased in Afghanistan. The selection of interviewees and commentators on TVs and radios, the subject of a discussion, reports and editorial policies are influenced by economic and political affiliation. In preparing reports, there is

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<sup>835</sup> Interview with Sediqullah Tawhidi.

<sup>836</sup> Internews, "Government Pledges to Protect Journalists and Freedom of Speech", Internews, [www.internews.org/our-stories/project-updates/afghanistan-government-pledges-protect-journalists-freedom-speech](http://www.internews.org/our-stories/project-updates/afghanistan-government-pledges-protect-journalists-freedom-speech) (accessed on 4 June 2015).

<sup>837</sup> Interview with Najiba Ayubi.



reluctance on the side of the government officials to express their position. It is common to hear only one side of the story, with the other side, usually the government officials, declining to respond to the news report.

### 10.3 ROLE

Score: 50

#### 10.3.1 Investigating and exposing cases of corruption (practice) – To what extent is the media active and successful in investigating and exposing cases of corruption?

There is investigative journalism, but it is limited to a few large media outlets. The Killid Group (radio and weeklies) had a series of investigative reports on the violation of human rights as well as on local warlords. Hasht-e Subh published a report about land-grabbing and those responsible for it. According to an expert, the Pajhwok News Agency has conducted investigative reporting about the Kabul Bank crisis, while Tolo TV and 1TV do not have significant investigative reporting.<sup>838</sup> The majority of media outlets claim that they have produced a few investigative reports, but after studying the details of the reports, it appears that the reports are not investigative in nature. There is no specific media outlet that is exclusively mandated to pursue investigative journalism.

The Independent Media Consortium was established in 2012 as a platform through which independent media can conduct investigative reports. The consortium is financially supported by Tawanmandi, a UK-led donor organisation mandated to strengthen CSOs. The consortium consists of six prominent media organisations – Pajhwok Afghan News, Killid radios, Radio Nawa Network, Killid print media (Killid, Morsal and Sapeda), Hasht-e-Subh (8AM daily) and Saba TV.<sup>839</sup> It broadcasts and publishes its reports simultaneously through the above six media outlets. This has prevented retaliation by those who are exposed in investigative reports, because they cannot target several media outlets.

Score: 50

#### 10.3.2 Informing the public on corruption and its impact – To what extent is the media active and successful in informing the public on corruption and its impact on the country?

The Afghan media have shown a lot of interest in reporting corruption cases since it is one of the top concerns in Afghanistan. There are political shows highlighting the damages corruption has inflicted on the country and investigative reports disclosing the identity of those who are involved in big scandals. However, there is no systematic programme about corruption and its impact in the Afghan media. The editor-in-chief of Afghanistan Today stated that, except for video clips of a few seconds, which are broadcast as commercially sponsored clips by the HOOAC, no programme on anti-corruption is broadcasted on a regular basis in any of the private electronic media to educate the public on how to curb corruption.<sup>840</sup>

The only educational programme that was aired on regular basis (a dozen times) was *shafafeyat* (transparency) by the HOOAC. Shafafeyat used to invite government officials and experts to talk on how to fight corruption and broadcast people's experiences with corruption. The programme was broadcast through national TV and radio. Corruption is prevalent in the urban centres, but the national TV and radio hardly attract viewers in the cities. Limiting anti-corruption educational

<sup>838</sup> Interview with Faisal Karimi, Assistant Professor of Journalism, Herat University, Kabul, 4 June 2015.

<sup>839</sup> Tawanmandi, "Strengthening independent media impact," Tawanmandi, [www.tawanmandi.org.af/reports/](http://www.tawanmandi.org.af/reports/) (accessed on 26 July 2015).

<sup>840</sup> Interview with Mohaydin Noori, Editor-in-Chief of Afghanistan Today, Kabul, 4 June 2015.

programmes to the national TV and radio could be understood as a lack of high-level government interest and support for such programmes.

**Score: 50**

### **10.3.3 Informing the public on governance issues – To what extent is the media active and successful in informing the public on the activities of the government and other governance actors?**

The media regularly reports on government activities, though mainly focusing on negative news. For the purpose of this report, around 330 pieces of news from six media outlets (Tolo News, Ariana News, Pajhwok News Agency, Salam Watandar, Killid Group and Hasht-e Subh) were reviewed for the month of May 2015 on 8 June 2015. Government activities constitute around 80 per cent of the news, while 15 per cent are society-related news and another 5 per cent world news.

More than half of the news items about the government are on corruption, embezzlement, security breaches, bomb blasts and government officials criticising one another. Negative and biased reporting has created hopelessness and negative attitudes towards the future among the public.

Obtaining an unbiased account about government activities and non-governmental issues is not an easy task, since most media outlets are either formally affiliated or informally associated with powerful political and religious leaders. Thus, one can easily see the difference between pro- and anti-state media. They report in line with their political disposition. According to Faisal Karimi, Assistant Professor of Journalism at Herat University, one can find more unbiased news on selected radio stations first, and in certain print outlets, but there is hardly any unbiased news on TV.<sup>841</sup> However, it is the ethnic aspect of the reporting in the media that has raised the most concern. According to a BBC assessment of the Afghan media, “Some fear a future of increased ethnic, sectarian and factional strife being play out through airwaves.”<sup>842</sup>

#### **Recommendations:**

- Media outlets should improve their financial transparency by publishing their sources of income and expenditure. The government and the public must be able to verify the financial sources of the media.
- The media should have a national code of conduct for broadcasting, mutually agreed on and recognised by media outlets.
- The development of a class of editors, independent from the owners, with a high standard of professionalism, should be anchored in the MML.
- The government should respect and protect freedom of expression and freedom of information.
- The government should protect journalists from violence and intimidation through prevention, investigation and prosecution of such cases.

<sup>841</sup> Interview with Faisal Karimi.

<sup>842</sup> BBC Media Action, “Afghanistan Media: the Challenges of Transition”, BBC Media Action, [http://downloads.bbc.co.uk/mediaaction/policybriefing/bbc\\_media\\_action\\_afghanistan\\_is\\_in\\_transition.pdf](http://downloads.bbc.co.uk/mediaaction/policybriefing/bbc_media_action_afghanistan_is_in_transition.pdf) (accessed on 4 June 2015).

## 11. CIVIL SOCIETY

### Summary

Afghanistan's legal environment allows all types of CSOs to register and function. Thousands of CSOs have been established since 2001. The CSOs have contributed to the promotion of human and women's rights, service delivery, rural development, electoral transparency and anti-corruption.

However, the government perceives NGOs as competitors for international funds, which creates a parallel governance structure undermining the legitimacy of the state. Attacks by insurgents and criminal groups, as well as a decrease in donor funding and financial sustainability are critical challenges and threats for the future of a vibrant civil society in Afghanistan. In addition, the CSOs score low regarding their financial transparency.

### Structure and organisation

In Afghanistan, CSOs are divided into NGOs and Social Associations (SAs). Both NGOs and SAs are defined as non-governmental, non-profit and non-political voluntary organisations.<sup>843</sup> All CSOs must have a charter outlining their organisation and internal working structure. NGOs can be established by at least two individuals, while the establishment of an SA requires 10 founding members. Both NGOs and SAs must have a Board of Directors and a general assembly.<sup>844</sup> In Afghanistan, NGOs are the modern embodiment of civil society with a focus on service delivery, promotion of human rights and oversight to monitor government activities. SAs include, but are not limited to, professional unions, human rights associations, women's rights associations, literary associations, religious councils and ethnic councils. Currently, the Law of Non-Governmental Organisations (NGOs Law) of 2005 and the Associations Law of 2013 regulate each of these CSO categories. Presently, there are 1675 NGOs registered with and monitored by the Ministry of Economy.<sup>845</sup> The Ministry of Justice registers and monitors SAs. A large number of SAs are not registered but function across the country. To date, there are 1028 SAs registered with the Ministry of Justice.<sup>846</sup>

### Assessment

#### 11.1 CAPACITY

**Score: 75**

##### 11.1.1 Resources (law) – To what extent does the legal framework provide an environment conducive to civil society?

There is a legal framework allowing a variety of CSOs to function and exempting them from paying taxes. Current Afghan laws make it easy for CSOs to be established and registered. The 2004

<sup>843</sup> The Ministry of Justice, "Associations Law", Official Gazette 1114 (1392AH [2013]): Article 2 and The Ministry of Justice, "Law of Non-Governmental Organizations (NGOs)", Official Gazette 857 (1384AH [2005]): Article: 5.

<sup>844</sup> MoJ, "Law of NGOs", 2005: Article 14(5).

<sup>845</sup> Ministry of Economy, "Lest-e NGO haye faal", Ministry of Economy, <http://moec.gov.af/fa/page/1209/10595> (accessed on 9 July 2015).

<sup>846</sup> Ministry of Justice, "Jamiat haye daraye jawaaz", Ministry of Justice, <http://moj.gov.af/fa/page/registered-political-parties-and-social-organizations/1701> (accessed on 9 July 2015).

Constitution ensures freedom of expression, the right to form associations, and the right to gather and hold non-violent demonstrations.<sup>847</sup> The existence of such political rights has created an environment that is conducive for individuals and groups to voice their demands and form interest groups. The NGOs Law of 2005 and the Associations Law of 2013 further guarantee the legal status of CSOs in Afghanistan. There was even a law that allowed national and international NGOs to register with the government during the period of Taliban rule.<sup>848</sup> The Taliban NGOs Law was abrogated after the NGOs Law of 2005.

The procedures of registering a CSO are generally simple and inexpensive. But there are still some issues raised by CSOs as obstacles to registering and meeting certain legal requirements. To register an SA, the Regulation on Establishment and Registration Procedure of Associations requires 10 founding members as mandatory.<sup>849</sup> The NGOs Law of 2005 is less restrictive with regards to the number of founding members for registering an NGO. According to this law, only two founding members are required to register an NGO.<sup>850</sup>

For foreign NGOs, at least one of its founders should have an address in Afghanistan. This is to ensure communication with, and to allow for possible legal proceedings against, foreign organisations by the government. The founders of an NGO can be a real or legal person.<sup>851</sup> NGOs have to undergo a two-tiered registration process involving the Technical Commission and High Commission for Evaluation. Both commissions are administered by the Ministry of Economy. To register and receive a licence, local NGOs must pay AFN 10,000 (US\$175) in fees, while foreign NGOs have to pay US\$1000 in fees.<sup>852</sup>

The founding members of an SA must submit an application to the Ministry of Justice. The Ministry of Justice shall respond within 15 days.<sup>853</sup> Upon meeting the requirements, an SA will receive a licence. The cost of such a licence is AFN 10,000 (US\$175).<sup>854</sup>

If an application for registering an SA is rejected, there is an appeal mechanism involving an authoritative court.<sup>855</sup> There is no appeal mechanism involving a court, if an NGO's registration is rejected, or an NGO is dissolved. If there are differences and disputes between NGOs and the government, any of the parties can submit a complaint to the Commission of Dispute Resolution. According to Article 39 of the NGOs Law of 2005, a party that does not accept a decision made by the Commission of Dispute Resolution can appeal to the relevant courts.<sup>856</sup> An association is dissolved if the general assembly decides on its dissolution, or does not extend its registration, or an authoritative court dissolves it.<sup>857</sup>

Article 14 of the Associations Law of 2013 stipulates that "an association initiates its work after receiving a registration certificate";<sup>858</sup> therefore, unregistered associations cannot legally conduct any activities. In practice, however, the government has not stopped the activities of unregistered CSOs. There is also a strong incentive to register a CSO, because donors do not fund unregistered CSOs.

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<sup>847</sup> MoJ, "Constitution", 2004: Articles 34–36.

<sup>848</sup> Ministry of Justice, "National and International NGOs Activities's Regulation," Official Gazette 792 (1421 AH[2002]).

<sup>849</sup> The Ministry of Justice, "Regulation on Establishment and Registration Procedure of Associations," Official Gazette 1138 (1393 AH [2014]): Article 6(2).

<sup>850</sup> MoJ, "Law of NGOs", 2005: Article 11.

<sup>851</sup> MoJ, "Law of NGOs", 2005: Article 11.

<sup>852</sup> MoJ, "Law of NGOs", 2005: Article 15(2).

<sup>853</sup> MoJ, "Regulation on Associations", 2014: Article 8(2).

<sup>854</sup> MoJ, "Regulation on Associations", 2014: Article 9(2).

<sup>855</sup> MoJ, "Regulation on Associations", 2014: Article 11.

<sup>856</sup> MoJ, "Law of NGOs", 2005: Article 39.

<sup>857</sup> MoJ, "Regulation on Associations", 2014: Article 16.

<sup>858</sup> MoJ, "Associations Law", 2013: Article 14.

The provisions for tax exemption relating to NGOs are very broad and favourable. Article 30 of the NGOs Law states that NGOs are exempt from all kinds of taxes and custom duties. National employees of an NGO have to pay income tax, while foreign employees also have to pay visa taxes.<sup>859</sup> This does not seem to have limited the activities of the CSOs. An NGO has to apply for tax exemption status, while an SA only submits a letter of registration issued by the Ministry of Justice to the Ministry of Finance, confirming the registration as a non-profit organisation.

However, in practice, there have been problems with regards to the tax exemption status of certain CSOs. For example Radio Killid is owned by a non-profit organisation and should be exempt from tax. But the radio's Executive Director stated that the Ministry of Finance requires it to pay taxes on the profit received from its activities,<sup>860</sup> because the officials from the Ministry of Finance argue that, based on tax law, radio stations have to pay tax.

**Score: 50**

### **11.1.2 Resources (practice) – To what extent do CSOs have adequate financial and human resources to function and operate effectively?**

CSOs receive their funding from several sources, mainly the international community. NGOs are entirely dependent on international grants and assistance, whereas some SAs receive funding from their members and local businessmen. The US, Canada, the UK, Germany, other European countries, Australia and Japan are the main donors supporting NGOs in Afghanistan. The largest donor is the US, which has funded 156 NGOs through its client Counterpart International.<sup>861</sup>

However, international financial assistance to CSOs has decreased significantly, affecting the activities and the employment of experienced and professional staff at CSOs, particularly at NGOs. Between 2010 and 2013, there was a 22 per cent decrease in funding provided to NGOs.<sup>862</sup>

According to one report, more than half of the NGOs interviewed have reported that the lack of funding, dependence on international donors and general economic problems in the country are the biggest challenges to their existence.<sup>863</sup>

There have been various attempts by CSOs to look for national sustainable sources of funding, but with little or no success. According to the Executive Director of the Afghan Civil Society Forum-Organisation, an organisation coordinating and supporting the activities of the CSOs, there have been several attempts by the NGOs to approach private companies for financial assistance.<sup>864</sup> However, these attempts have not resulted in fruitful results. There are hardly any organised national agencies or companies that financially support the CSOs.

There are local funding sources and private donors in the country, but the SAs, not the NGOs, are the main beneficiaries. Afghan businessmen fund religious schools, Islamic councils, religious and literary associations, and even some unions. For example, in Herat, there are around 451 religious schools, where approximately four hundred thousand girls and boys learn Islamic teachings.<sup>865</sup>

CSOs, especially NGOs, have not been able to attract many volunteers for their activities. More than one-third of the CSOs do not have volunteers, while another third has ten or fewer volunteers.<sup>866</sup>

<sup>859</sup> MoJ, "Law of NGOs", 2005: Article 7.

<sup>860</sup> Interview with Najiba Ayubi, Executive Director, Killid Group, Kabul, 1 June 2015.

<sup>861</sup> Anika Ayrpetyants, "Afghanistan Civil Society Assessment," USAID, 2011: 19.

<sup>862</sup> Langer Research Associates, "2013 Afghanistan Civil Society Assessment," Counterpart International, 2014: 14.

<sup>863</sup> Langer Research Associates, 2014: 13.

<sup>864</sup> Interview with Aziz Rafiee, Executive Director, ASCFO, Kabul, 6 July 2015.

<sup>865</sup> Pamirpress, "Musaheba ba sukhangu nahaadha deeni herat," Pamirpress, [www.pamirpress.com/nbody.php?id=4460](http://www.pamirpress.com/nbody.php?id=4460) (accessed on 21 July 2015).

<sup>866</sup> Ayrpetyants, 2011: 53.

The reason the CSOs have not shown much interest in attracting volunteers is the large volume of foreign funds available to CSOs, especially NGOs. With decreased funding sources, some NGOs are making attempts to attract volunteers. There is some progress in this regard. For example, the FEFA attracted 10,000 volunteers as observers in the 2014 elections.<sup>867</sup>

Despite these resource constraints, there is an increasing pattern of professionalisation of CSOs. In 2005, 30 per cent of CSOs had no full-time staff, but by 2011 it had decreased to 8 per cent.<sup>868</sup> Still, there are issues with organisational effectiveness. One such issue is the small number of staff with, for instance, 50 per cent of CSOs report having 10 employees or fewer.<sup>869</sup> The small number of staff affects the effectiveness and impact of CSOs. In the job market, the Afghan government, CSOs and foreign NGOs compete with one another to attract professional staff. The NGOs attract government employees by paying them higher salaries and benefits. The government pays a director of human resources around AFN 20000 (US\$350),<sup>870</sup> while an NGO such as IWA pays a human resources manager around US\$2000. The foreign NGOs also attract staff from local NGOs, because the salary and benefits are much higher. The salary of a human resource manager in an international NGO is much higher. This has affected the public sector, because people with professional skills and advanced knowledge leave government posts for NGOs and international NGOs. Some professionals do not even apply for government jobs to begin with.

**Score: 75**

### **11.1.3 Independence (law) – To what extent are there legal safeguards to prevent unwarranted external interference in the activities of CSOs?**

There are enough safeguards to prevent government interference in the affairs of CSOs. The government monitoring mechanism is reasonably designed to allow the smooth functioning of CSOs. The Associations Law of 2013 allows people to form associations based on common interest, social orientations, cultural norms, common values and specific ethnic groups, including regional associations, interest groups, labour unions, and professional, literary and scientific associations.<sup>871</sup> No association or NGO can be established to operate against the principles of Islam.

The relations between the state and CSOs are well defined and designed to create an environment that is conducive for the activities of civil society. Article 7 of the NGOs Law stipulates that “no limitation shall be imposed on the activities and objectives of the NGOs, except according to the law.”<sup>872</sup> There are also other provisions, which ensure the independence of NGOs. A strong safeguard in the NGOs Law is Article 46, which does not allow security agencies to interfere in the affairs of the NGOs. It states that “security agencies can only obtain their required information regarding NGOs activities through the MoE.”<sup>873</sup> The NGOs Law stipulates that NGOs are not allowed to engage in political activities, donate funds to political parties or individuals, and engage in violent activities or terrorism.<sup>874</sup> These measures are designed to help civil society better perform its social responsibilities.

<sup>867</sup> Interview with Nader Naderi, Executive Director, FEFA, Kabul, 8 July 2015.

<sup>868</sup> Ayrapetyants, 2011: 53.

<sup>869</sup> Ayrapetyants, 2011: 53.

<sup>870</sup> Interview with Abdul Haleem Himmat, Admin and Finance Director, Ministry of Justice, Kabul, 24 August 2015.

<sup>871</sup> MoJ, “Associations Law”, 2013: Article 2.

<sup>872</sup> MoJ, “Law of NGOs”, 2005: Article 7.

<sup>873</sup> MoJ, “Law of NGOs”, 2005: Article 46.

<sup>874</sup> MoJ, “Law of NGOs”, 2005: Article 8.



There is no law making it mandatory for state representatives to attend CSOs meetings. All NGOs are required to have a Board of Directors,<sup>875</sup> but the state is not required to have a member on this board. The law is silent about the right to privacy of NGOs.

**Score: 25**

#### **11.1.4 Independence (practice) – To what extent can civil society exist and function without undue external interference?**

The government has not directly interfered in the affairs of CSOs, but there have been increasing government attempts to control CSOs, especially at the provincial level. The biggest threats to CSOs, however, come from non-state actors, such as insurgents and local military groups.

In the capital Kabul, CSOs criticise and hold demonstrations against state and non-state actors without fear of retaliation. However, the level of freedom of expression is lower at the provincial level, because the governors play a stronger role in the affairs of the CSOs. According to a USAID report, participants in CSO events in the provinces are very careful regarding what they say, and what not to say.<sup>876</sup> This is reportedly even worse at the district and village levels. Freedom of expression is also very low in the rural areas due to the fear of retaliation from non-state actors.

There has been no case of detention, intimidation and/or harassment by the state reported by CSOs and activists. However, there are several cases of intimidation, harassment and the killing of CSO members by non-state actors, including local commanders and insurgent groups. In 2014, a five-member team of the International Committee of the Red Cross were taken hostage while travelling to deliver aid.<sup>877</sup> These five Afghans working for the International Committee of the Red Cross in Herat were killed. In another incident, four aid workers, including two foreigners, were taken hostage in Badakhshan in 2012, but they were rescued by a joint operation by Afghan and NATO forces.<sup>878</sup> In the latter case, the aid workers were abducted by criminal groups who asked for ransom. The most recent and shocking case was the killing of nine Afghan CSO members working for People in Need in Balkh in May 2015.<sup>879</sup> People in Need immediately suspended its activities in Afghanistan. People in Need used to work with the Ministry of Rural Rehabilitation and Development of Afghanistan to improve the lives of farmers in rural areas.

According to the UN Office for Coordination of Humanitarian Affairs in Kabul, “since the start of 2015, 26 aid workers have been killed, with another 17 injured and 40 abducted.”<sup>880</sup> The reason for the increase in targeting of NGO workers is manifold. One reason is that the foreign forces have the same programmes of reconstruction and aid as NGOs. This blurs the line between foreign military and foreign NGOs. Another reason is the increasing violence in the country by insurgent and criminal groups.<sup>881</sup>

The government has engaged in investigations of those attacking or intimidating NGOs. However, the majority of the investigations have not resulted in successful prosecution. In the case of the

<sup>875</sup> MoJ, “Law of NGOs”, 2005: Article 14.

<sup>876</sup> USAID, “2013 CSO Sustainability Index for Afghanistan”, USAID, 2013: 3.

<sup>877</sup> Aljazeera, “Hunt on for seized aid workers in Afghanistan”, Aljazeera, [www.aljazeera.com/news/asia/2014/08/hunt-seized-aid-workers-afghanistan-201481713296770676.html](http://www.aljazeera.com/news/asia/2014/08/hunt-seized-aid-workers-afghanistan-201481713296770676.html) (accessed on 11 August 2015).

<sup>878</sup> Aljazeera, “Aid workers freed in Afghanistan raid”, Aljazeera, [www.aljazeera.com/news/asia/2012/06/20126252858119801.html](http://www.aljazeera.com/news/asia/2012/06/20126252858119801.html) (accessed on 11 August 2015).

<sup>879</sup> BBC Persian, “Afraad musala 9 emdad rasan ra dar afghanistan kushtand,” BBC Persian, [www.bbc.com/persian/afghanistan/2015/06/150602\\_k03\\_insurgents\\_killed\\_9\\_govt\\_worker](http://www.bbc.com/persian/afghanistan/2015/06/150602_k03_insurgents_killed_9_govt_worker) (accessed on 9 July 2015).

<sup>880</sup> CNN, “Afghanistan: Militants kill 9 aid workers in attack on house,” CNN, <http://edition.cnn.com/2015/06/02/asia/afghanistan-violence/> (accessed on 11 August 2015).

<sup>881</sup> Peace Operations Monitor, “Overview of non-governmental programs”, Peace Operations Monitor, <http://pom.peacebuild.ca/NGOAFghanistan.shtml> (accessed on 11 August 2015).

Balkh attack, the police sent a delegation to investigate the incident and the President publicly condemned the attack.<sup>882</sup> However, two months have passed and nobody has been arrested.

## 11.2 GOVERNANCE

**Score: 50**

### 11.2.1 Transparency (practice) – To what extent is there transparency in CSOs?

All NGOs and SAs are required by law to submit yearly reports about their activities and financial affairs to the Ministry of Economy and Ministry of Justice respectively. If an NGO does not submit these reports, the government can decide to dissolve it.<sup>883</sup> The government has dissolved thousands of NGOs and SAs for not submitting these reports. In January 2012, the Ministry of Economy announced the closure of 800 NGOs, because they did not submit their six-month reports and broke the law.<sup>884</sup>

The majority of the large NGOs and SAs have websites. The financial reports and activities of many of these organisations are available on their websites. However, there are some exceptions. According to an expert, there are some NGOs that have funds in the millions, but nobody knows where the money comes from and how it is spent.<sup>885</sup> As a result of these NGOs, people's perception of the whole NGO community has become negative. According to one report, 75 per cent of people think the NGOs are not transparent in their financial affairs.<sup>886</sup>

As noted earlier, both NGOs and SAs are required to have a Board of Directors.<sup>887</sup> The Ministry of Economy and the Ministry of Justice record the names of the directors. Most NGOs and associations publish the names of the directors on their website.

**Score: 50**

### 11.2.2 Accountability (practice) – To what extent are CSOs answerable to their constituencies?

NGOs and SAs are accountable to the government of Afghanistan, their donors (usually international donors), boards of directors and general assemblies. The government of Afghanistan receives mandatory yearly reports from all CSOs. According to the Head of the NGO Department at the Ministry of Economy, the government does not have the capacity to verify the thousands of reports it receives.<sup>888</sup>

The international community, the main donor to NGOs and some SAs, closely monitors the expenditure of the grants they give CSOs. The European Commission, for example, requires its grantees to submit detailed reports, including the "physical" achievements of the projects.<sup>889</sup> Some donors even require audit reports to be included in the annual reports of aid recipients. Currently, SIGAR conducts financial auditing of US funds to Afghanistan including USAID grants for CSOs. In

<sup>882</sup> BBC Persian, "Afraad musala 9 emdad rasan ra dar afghanistan kushtand", BBC Persian, [www.bbc.com/persian/afghanistan/2015/06/150602\\_k03\\_insurgents\\_killed\\_9\\_govt\\_worker](http://www.bbc.com/persian/afghanistan/2015/06/150602_k03_insurgents_killed_9_govt_worker) (accessed on 9 July 2015).

<sup>883</sup> MoJ, "Law of NGOs", 2005: Article 35(3).

<sup>884</sup> The Daily Afghanistan, "Wazarat-e eghtasad: hudud 800 mosasa ghar-e dawlati munhal elaan shud", the Daily Afghanistan, [www.dailyafghanistan.com/national\\_detail.php?post\\_id=123616](http://www.dailyafghanistan.com/national_detail.php?post_id=123616) (accessed on 16 August 2015).

<sup>885</sup> Interview with Aziz Rafiee.

<sup>886</sup> Scott Bohlinger and Lorenzo Delesgues, "Perceptions of Afghan Aid Sector Corruption", Integrity Watch Afghanistan, 2008: 20.

<sup>887</sup> MoJ, "Law of NGOs", 2005: Article 14.

<sup>888</sup> Interview with Sayeed Hashim Bassirat, Head of NGOs Department, Ministry of Economy, Kabul, 29 June 2015.

<sup>889</sup> M. Asif Ehsan, "Self-regulatory mechanism for Non-Governmental Organizations", 2013: 10.

2015, SIGAR identified US\$194,000 in questionable costs (costs not accompanied by enough documentation) in one contract with Internews Network.<sup>890</sup>

Legally, the general assembly is the highest decision-making authority of CSOs, which also elects the Board of Directors. The Board of Directors is the second highest ranking decision-making entity. In practice, however, it is not the general assembly and/or the Board of Directors making high-level decisions, but the president or executive director of a CSO. According to USAID CSOs Sustainability Index, a significant number of CSOs are centred on their executive directors.<sup>891</sup> In such organisations the Board of Directors is symbolic and members are not selected on a professional basis. In these organisations the executive director makes decisions for the general assembly and the Board of Directors. This is particularly true for small NGOs and SAs, but not larger NGOs, SAs and NGO-coordinating organisations.

Nevertheless, in large and established NGOs and SAs the role of the Board of Directors is very critical. For example, the Board of Directors of the Afghan Women Network (AWN), Afghan Coordination Body of Aid Relief (ACBAR), Afghan Civil Society Forum-Organisation, IWA and the Afghan NGOs Coordination Bureau have a strong role in decision-making and the recruitment of high-level staff. According to Dr Ahmad Jan Ahmad of the Afghan NGOS Coordination Bureau, in some of the above-mentioned organisations, the Board of Directors even interferes with the executive tasks of the organisations.<sup>892</sup>

**Score: 25**

### **11.2.3 Integrity (practice) – To what extent is the integrity of CSOs ensured in practice?**

There is no sector-wide code of conduct recognised by CSOs. There have been attempts by CSOs to design a self-regulatory mechanism, a code of conduct and a monitoring agency. There are at least a dozen civil society-coordinating bodies such as the Afghanistan Civil Society Forum-Organisation, AWN, the Afghan NGOs Coordination Bureau, the Civil Society and Human Rights Network and the ACBAR. These are all organisations claiming to promote integrity principles, to coordinate the work of NGOs and SAs, and to lobby the government and the international community.

Of the above-mentioned bodies only ACBAR has a code of conduct, which was last updated in 2013.<sup>893</sup> It is a code dealing with humanitarian activities, reconstruction and development. However, ACBAR does not monitor its member NGOs' adherence to the implementation of the code of conduct. Furthermore, although there are close to 2000 NGOs in Afghanistan, only around 100 are members of ACBAR.<sup>894</sup> SAs do not have a sector-wide code of conduct and no attempts have been made to create one or to create a system of self-regulation and promote integrity principles among themselves.

## **11.3 ROLE**

**Score: 50**

### **11.3.1 Holding the government accountable – To what extent is civil society active and successful in holding the government accountable for its actions?**

<sup>890</sup> Special Inspector General for Afghanistan Reconstruction, "USAID's Afghanistan Media Development and Empowerment Project", Special Inspector General for Afghanistan Reconstruction, 2015: 2.

<sup>891</sup> USAID, "2013 CSO Sustainability Index for Afghanistan", USAID, 2013: 4.

<sup>892</sup> Interview with Dr Ahmad Jan Ahmad, Executive Director, ANCB, Kabul, 22 July 2015.

<sup>893</sup> Marine Durand, "Panorama of Civil Society Organizations in Afghanistan", ACBAR, 2015: 30.

<sup>894</sup> Durand, 2015: 31.

Although civil society has to build its capacity and ensure its financial sustainability, CSOs have acquired enough maturity to at least partially deliver services and hold the government accountable in various sectors. The CSOs have played an important role in the areas of women's rights, public awareness about the rule of law, public engagement in elections, electoral transparency, service delivery in education and health, and anti-corruption. This positive picture is evidenced in people's perception of NGOs. Based on the Survey of Afghan People in 2014, 57 per cent of the people have confidence in NGOs.<sup>895</sup> That is lower than the media (73 per cent) and religious leaders (72 per cent) but higher than members of the Parliament (52 per cent). According to an older survey by IWA, 33 per cent of the people (from a sample of 3000) personally benefited from the work of NGOs, while 62 per cent thought that NGOs had brought some improvements in their area.<sup>896</sup>

The Afghan government perceives the NGOs as competitors. According to ACBAR, the government feels that NGOs have created a parallel structure, substituting the government and competing for foreign funds.<sup>897</sup> The government has always asked the donors to channel their aid through the government treasury.

Having said that, only a small number of NGOs and SAs have credibility and are reliable partners of the government and the international community. Of the several CSOs working in the field of electoral reform and election observation, FEFA advocates electoral reforms, election observation and women's outreach. In the 2009 elections, FEFA had 7000 observers on election day and 10,000 in the 2014 elections.<sup>898</sup> Following the 2014 election, FEFA reported 2500 cases of electoral violations.<sup>899</sup> According to the Executive Director of FEFA, the government had to either recount or invalidate the votes of most of the cases reported by FEFA.<sup>900</sup> The complaints made by presidential candidates and international observers were instrumental in recounting millions of votes in the 2014 elections.

There are hundreds of CSOs promoting women's rights, equity and service delivery to women. The high number of women-related CSOs is closely related to the policies of foreign donors in Afghanistan. AWN, which was established in 1996 after the World Conference on Women in Beijing, is the largest women's advocacy organisation in the country. One of the successful advocacy campaigns conducted by AWN in 2015 was the nomination of Aneesa Rasuly, founder of the Women Judges' Association, who has served the Judiciary for 40 years, as one of the nine members of the Supreme Court,<sup>901</sup> although her nomination was rejected by the Wolesi Jirga.

## Score: 25

### 11.3.2 Policy reform – To what extent is civil society actively engaged in policy reform initiatives on anti-corruption?

There have been attempts by the CSOs to engage with the government to enact better anti-corruption legislation, but such efforts are limited to a few focused organisations. The CSOs concentrating on fighting corruption are NGOs rather than SAs. Some NGOs such as Anti-Corruption Watch, Transparency and Accountability Watch, and Transparency Initiative of

<sup>895</sup> Asia Foundation, "Afghanistan in 2014: A Survey of Afghan People", Asian Foundation, 2014: 89.

<sup>896</sup> Bohlinger and Delesgues, "Perceptions of Afghan Aid Sector Corruption", Integrity Watch Afghanistan, 2008: 27.

<sup>897</sup> Emillie Jelinek, "A Study of NGOs relations with Government and Communities in Afghanistan," Agency Coordinating Body for Afghan Relief, 2006:5.

<sup>898</sup> Interview with Nader Naderi.

<sup>899</sup> BBC Persian, "Fefa az woguye besh as 2500 takhaluf dar ruz entekhabat khabardad," BBC Persian, [www.bbc.com/persian/afghanistan/2014/06/140617\\_k05\\_fefa\\_report\\_about\\_second\\_round](http://www.bbc.com/persian/afghanistan/2014/06/140617_k05_fefa_report_about_second_round) (accessed on 9 July 2015).

<sup>900</sup> Interview with Nader Naderi.

<sup>901</sup> Radio Azadi, "Yak uzwe estara makama az meyaan zanan entakhab shawad," Radio Azadi, <http://da.azadiradio.org/content/article/24889162.html> (accessed on 20 August 2015).

Afghanistan are nascent organisations with just one to two years of experience. There are other NGOs or coalitions with more experience, such as ACTA, Cooperation for Peace and Development, the Afghan Anti-Corruption Network, Afghans Coordination Against Corruption (AFCAC), the objective of which is fighting corruption in Afghanistan.

Founded by Equality for Peace and Democracy in 2010, ACTA “is a coalition of experts and community-based youth groups, women, elders and religious leaders who voluntarily promote transparency and accountability in the government’s policy-making and resource allocation processes.”<sup>902</sup> It is active in Kabul, Nangarhar, Bamyan and Herat. Cooperation for Peace and Development launched the “Youth and Women for Promotion of National Anti-Corruption Strategy” to contribute to the Afghan anti-corruption movement.<sup>903</sup> The Afghan Anti-Corruption Network is an unregistered CSO established in 2010. One of its achievements was to hold a five-kilometre race against corruption in Kabul. Currently, the Afghan Anti-Corruption Network is inactive. AFCAC was established in 2012 as a coordinating body of CSOs against corruption. As of July 2015, it has 81 NGOs and individuals as its members.<sup>904</sup> AFCAC has an anti-corruption hotline and has attempted to establish an Afghan Anti-Corruption Coalition. Currently the AFCAC has only an advocacy programme with a total of 13 staff members.<sup>905</sup>

The most active CSO in terms of anti-corruption advocacy in Afghanistan is IWA.<sup>906</sup> This is the most experienced and the leading organisation in research, monitoring and advocacy campaigns against corruption. IWA has conducted 33 research reports on corruption and promoting transparency, including the National Corruption Survey, which measures Afghan perceptions of corruption every two years.<sup>907</sup> It has monitored the government’s service delivery performance for schools, courts, infrastructure projects and the extractive industries. IWA advocated for the ratification of the Access to Information Law and was engaged in establishing the AIOC in June 2015. The Chair of the AIOC is IWA’s Executive Director.

#### Recommendations:

- CSOs should take steps to increase their accountability towards their stakeholders by strengthening internal democratisation and non-partisanship, and improving external communication and the transparency of funding sources.
- CSOs should have a national code of conduct and a regulatory entity to provide effective monitoring.
- The government should protect civil society’s legitimate space, enable CSOs to operate freely, provide sources of funding awarded through competitive processes without influencing strategies. The government should also include civil society in consultative decision-making processes.
- Donors should support CSOs by providing funding and capacity-building support.

<sup>902</sup> Equality for Peace and Democracy, “Afghans’ Coalitions for Transparency and Accountability”, Equality for Peace and Democracy, [www.epd-afg.org/acta-platform/](http://www.epd-afg.org/acta-platform/) (accessed on 1 September 2015).

<sup>903</sup> Cooperation for Peace and Development, “Anti-Corruption: Success Stories,” Cooperation for Peace and Development, <http://cpd-af.org/anti-corruption/success-stories/> (accessed on 1 September 2015).

<sup>904</sup> Interview with Sadaqat Ali Zia, Executive Director, AFCAC, Kabul, 8 July 2015.

<sup>905</sup> Interview with Sadaqat Ali Zia.

<sup>906</sup> Interview with Dr Ahmad Jan Ahmad.

<sup>907</sup> Integrity Watch Afghanistan, “Surveys and Reports,” Integrity Watch Afghanistan, [www.iwaweb.org/pub.html](http://www.iwaweb.org/pub.html) (accessed on 9 July 2015).

## 12. BUSINESS SECTOR

### Summary

During the last decade, the GOIRA has made several attempts to simplify rules and regulations for businesses. Business registration is fairly simple, quick and affordable; however, due to the high level of insecurity, corruption and lack of government cooperation with the private sector, conducting a business transaction is still cumbersome.

The independence of private companies is enshrined in the Private Investment Law (PIL) and the Income Tax Law. However, in practice, there is undue external interference by public officials, particularly in relation to customs and tax issues. Some public officials abuse their positions to elicit bribes from the business community, while some businesses are also involved in initiating bribery transactions.

Intellectual Property Rights (IPRs) are protected by the Law on Trade Marks Registration, the Patent (Inventions) and Explorer Rights Law, and the Law Supporting the Rights of Authors, Composers, Artists, and Researchers. In practice, though, the implementation of IPRs is not enforced by the government.

The provisions in the two out of the four laws relating to business to some extent ensure transparency in the activities of corporations and Limited Liability Companies (LLCs). The integrity of the private sector is questionable, however, because there is no code of conduct, either created by the government or the business community itself, to which the private sector has to adhere. The business sector is struggling to engage the government on combatting corruption. To date, the private sector has not provided any financial support to the public sector or civil society for anti-corruption campaigns. Due to a lack of trust and coordination between the business sector and civil society few joint anti-corruption initiatives have been put together.

### Structure and organisation

During the 30 years of war and conflict, Afghanistan's economy saw extensive devastation. Since the engagement of the international community in 2001, Afghanistan has transitioned from a centrally planned economic system to a free market economy.

Afghanistan's private sector is a composite of investors and entrepreneurs in both the industrial and the services sectors. In Afghanistan, there are four types of businesses: 1) Sole proprietorships; 2) partnerships; 3) corporations; and 4) LLCs.<sup>908</sup> Investors can choose the type of business depending on their business needs. The majority of businesses in Afghanistan are LLCs and corporations; therefore, the focus of the research in this pillar is on these two.

The Afghanistan Chamber of Commerce and Industries (ACCI), and the Afghanistan Private Investment Support Agency (AISA) are two organisations with which the private sector deals and which protect its interests. The ACCI provides commercial attribution and mediation services to private businesses. The AISA supports investors in business registration, issuing investment licences and providing them with space at industrial parks.

In addition to obtaining a licence from AISA, industries in the sectors of health, aviation, telecommunication, education, media, export and import, and others are required to obtain a licence

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<sup>908</sup> Una Au, Raaj Narayan, Max Rettig, Scott Schaeffer, Anne Stephens and Eli Sugarman, "An Introduction to the Commercial Law of Afghanistan," Afghanistan Legal Education Project at Stanford Law School, (2011/2012): 133–134.



from the relevant ministries as well. Despite the insecurity, as of June 2015, a total of 45,500 firms/companies/industries are registered with AISA. Out of the total registered companies, 42,875 are domestic, and have hired 1,287,415 domestic workers, and 2,625 are international companies, which have hired 54,911 foreigners. The overall investment made by domestic and international companies has reached US\$10,126,335,394.80.<sup>909</sup>

Out of the total registered companies/firms, there are four telecommunication companies (Roshan, Etisalat, MTN and Afghan Wireless), five airlines, 11 commercial banks, over 60 media outlets, numerous construction companies and other businesses operating in the country.

## Assessment

### 12.1 CAPACITY

**Score: 75**

#### 12.1.1 Resources (law) – To what extent does the legal framework offer an enabling environment for the formation and operation of individual businesses?

The legal framework offers an enabling environment for the formation and operation of businesses in the country. According to Article 10 of the Constitution, the state shall encourage, protect and ensure the safety of capital investment and private enterprises in accordance with the provisions of the law and market economy.<sup>910</sup>

Registering and obtaining a business licence is mandatory for businesses. To start a business, a company must first register an existing enterprise or an enterprise that is in the process of formation with AISA.<sup>911</sup> Thereafter, it must obtain a licence from the relevant sector's ministry. Once this licence is obtained, the AISA issues a business licence to the registered company. According to the Director of Business Development Services at AISA, to start a business, a businessman needs to follow three steps of the establishment process. A business must register with the AISA and obtain a Tax Identification Number. Thereafter, it must pay the registration, publication and licence fees, and obtain the business licence from AISA.<sup>912</sup> These three steps demonstrate that starting a business is quite easy in Afghanistan and that it does not take a long time for an investor to start a business of his/her choice. According to Article 2 of the Law on Business Corporations and Limited Liability Companies, no corporation or LLC can start operations or promote their businesses without having a business licence and registering its licence with the Central Registry.<sup>913</sup>

Similar to starting a business, a decision to close down a business must first be registered with the AISA and then with the respective ministry. The AISA sends one copy of the closure order to the Ministry of Finance for removing the Tax Identification Number and another to the relevant ministry. Businesses can also be closed down or dissolved by a decision of the commercial court. According to the Law on Business Corporations and Limited Liability Companies, a corporation can be closed down in two ways: 1) The majority of the shareholders or members of the Board of Directors who have not sold their shares can dissolve a corporation;<sup>914</sup> 2) when a corporation does not follow the provisions provided in Article 107 of the same law, it can be dissolved by the decision of an

<sup>909</sup> Afghanistan Investment Support Agency [AISA], "AISA statistics end of April 2015," AISA, [www.aisa.org.af/en](http://www.aisa.org.af/en) (accessed on 28 June 2015).

<sup>910</sup> MoJ, "Constitution", 2004:Article 10.

<sup>911</sup> Ministry of Justice, "Private Investment Law," Official Gazette 869 (1384AH [2005]): Article 11(2).

<sup>912</sup> Interview with Zabihullah Ihsan, Director of Business Development Services, AISA, Kabul, 24 June 2015.

<sup>913</sup> Ministry of Justice, "Law on Business Corporations and Limited Liability Companies," Official Gazette 913 (1385AH [2007]): Article 2.

<sup>914</sup> MoJ, "Law on Corporations and LLCs", 2007: Article 105.

authorised commercial court.<sup>915</sup> Once a business is dissolved by a court decision, the business is closed down and the assets of the business are liquidated.

Property rights are guaranteed by the Afghan Constitution, which states that the acquisition of private property shall be legally permitted only for the sake of public interest, and for exchange in prior and just compensation.<sup>916</sup> On the other hand, the Constitution does not discuss IPRs. Due to its importance in establishing new and innovative businesses, fair competition and investment by international business in the country, a number of laws have been passed to protect IPRs. These include the Law on Trade Marks Registration, the Patent (Inventions) and Explorer Rights Law, and the Law Supporting the Rights of Authors, Composers, Artists, and Researchers. According to Article 31 of the Law Supporting the Rights of Authors, Composers, Artists, and Researchers, if a person publishes or broadcasts another person's work without his/her permission, the publisher will be imprisoned for one year or he/she will be charged a fine of no less than AFN 50,000 (US\$877) and no more than AFN 100,000 (US\$1754).<sup>917</sup>

The enforcement of commercial contracts is protected by the Law on Commercial Contracts and Selling Property (LCCSP). The LCCSP is detailed and covers all dimensions of a contract. However, the procedures, cost and duration of a claim for effective commercial dispute resolution are not discussed in the LCCSP. The silence of the law is a major challenge for businessmen when referring to the commercial courts. The 2015 World Bank survey reports that for commercial contract enforcement it takes 1642 days and costs 25 per cent of the value of the commodity. It has to go through 46 procedural steps at the commercial court. This lengthy and complicated process means that Afghanistan ranks 183 out of 189 economies for enforcing contracts.<sup>918</sup> The lengthy procedures undermine transparency and discourage businessmen from referring to the commercial courts for contract dispute resolutions.

## **Score: 25**

### **12.1.2 Resources (practice) – To what extent are individual businesses able to form and operate effectively in practice?**

The registration of businesses is simple and straight-forward; however, the conducting of business remains difficult. The protection of IPRs is still a great challenge. Over the last few years, major improvements have been introduced to ease the starting of a business. The 2015 World Bank report ranks Afghanistan 24 out of 189 economies around the world for ease of starting a business. The same report indicates that the starting of a business takes seven days, compared with India (28.4), Pakistan (19), Iran (12), Kyrgyz (8) and Tajikistan (39), and the cost of starting a business is 15.1 per cent of the income per capita, higher than the above-mentioned countries, except Tajikistan where the cost is 23.3 per cent.<sup>919</sup> This figure includes the cost of a business licence, electricity connection, construction permit, total tax rate, among others. As a "one stop shop" the AISA has made several attempts to make business registration and obtaining licences easier. Most recently, some entrepreneurs pointed out that registration and obtaining a licence takes one to three days.<sup>920</sup>

However, according to our desk research and interviews, there are some ambiguities about business operation, making it difficult for businesses to function in a business-friendly environment.

<sup>915</sup> MoJ, "Law on Corporations and LLCs", 2007: Article 107.

<sup>916</sup> MoJ, "Constitution", 2004: Article 40.

<sup>917</sup> Ministry of Justice, "Law Supporting the Rights of Authors, Composers, Artists and Researchers (Copyright Law)," Official Gazette 956 (1387AH [2008]): Article 31.

<sup>918</sup> World Bank, "Doing Business 2015," World Bank, (2015): 67.

<sup>919</sup> World Bank, "Doing Business 2015", World Bank, (2015): 11.

<sup>920</sup> Interview with CEO of Qahraman and Sahra Enterprises, Kabul, 2 July 2015. Also interview with A to Z Group of Companies on 5 July 2015.

The ACCI's First Vice Chairman Khan Jan Alokozai criticised the existing legal framework for businesses. He stated that the business laws are mainly "copy and pastes" from other countries without considering the business situation in Afghanistan.<sup>921</sup> Therefore, they are not effectively and efficiently enforced by the entrepreneurs.

In practice, according to the World Bank 2015 doing business report, Afghanistan is ranked 183 out of 189 economies in ease of doing business overall. This shows that Afghanistan is weaker than Kyrgyzstan (102), Pakistan (128), Iran (130), India (142) and Tajikistan (166).<sup>922</sup>

Property is an important factor for doing business. In registering property, Afghanistan is ranked 183 out of 189 countries, while South Asia has an average of 127.<sup>923</sup> The process of property registration is more complicated than in neighbouring countries. In Afghanistan, there are nine procedures, which take 250 days,<sup>924</sup> while in India, Pakistan, Tajikistan, Kyrgyzstan and Iran it takes less than 50 days. In terms of resolving business insolvency, Afghanistan is ranked 159, while South Asia's average is 125.<sup>925</sup> This shows that the laws related to business are implemented effectively in Afghanistan.

There are no serious enforcement mechanisms to effectively protect property rights, especially IPRs, in practice. According to a US government report, pirated DVDs and software are sold throughout the country, and the sale of counterfeit pharmaceuticals and building materials is also widespread.<sup>926</sup>

In case of any complaint against a government official, entrepreneurs prefer to register their complaints through a direct petition with the ACCI and respective ministries instead of the HOOAC. The interviewees stated that the direct petition is the only effective and commonly used mechanism for filing a complaint against private persons and public officials.<sup>927</sup>

It is worth mentioning that USAID supports individual businesses in terms of formation and effective operations. USAID, under its project Afghanistan Small and Medium Enterprise Development (ASMED), provides business courses, such as proposal writing, marketing, management and accounting, as well as financial grants, technology and other services to small businesses. Moreover, ASMED has generated thousands of jobs at the national and subnational levels and supported dozens of businesses to attend trade fairs at the national, regional and international levels. Between 2006 and 2012, ASMED organised the participation of SMEs in 30 international trade fairs in different countries. Consequently, Afghan businesses generated a total of US\$45 million in sales.<sup>928</sup>

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<sup>921</sup> Interview with Khan Jan Alokozai, First Vice-Chairman, Afghanistan Chamber of Commerce and Industries (ACCI), Kabul, 27 June 2015.

<sup>922</sup> World Bank Group, "Doing Business 2015", 2014 The International Bank for Reconstruction and Development / The World Bank (2015): 8.

<sup>923</sup> World Bank Group, "Doing Business 2015", 2014 The International Bank for Reconstruction and Development / The World Bank (2015): 37.

<sup>924</sup> World Bank Group, "Doing Business 2015", 2014 The International Bank for Reconstruction and Development / The World Bank (2015): 12.

<sup>925</sup> World Bank Group, "Doing Business 2015", 2014 The International Bank for Reconstruction and Development / The World Bank (2015): 12–14.

<sup>926</sup> U.S Department of State, "2014 Investment Climate Statement-Afghanistan," U.S Department of State, [www.state.gov/e/eb/rls/othr/ics/2014/226588.htm](http://www.state.gov/e/eb/rls/othr/ics/2014/226588.htm) (accessed on 28 June 2015).

<sup>927</sup> Interview with CEO of Shirin Qahraman and Sahra Enterprises.

<sup>928</sup> DAI, "Afghanistan Small and Medium Enterprise Development [ASMED]", DAI, <http://dai.com/our-work/projects/afghanistan%E2%80%94small-and-medium-enterprise-development-asm> (accessed on 28 June 2015).

**Score: 75**

**12.1.3 Independence (law) – To what extent are there legal safeguards to prevent unwarranted external interference in the activities of private businesses?**

A sound legal system exists to safeguard businesses and protect them from external interference. The legal system plays a significant role in enabling an independent private business sector in the country. For the start-up and operation of a business, a businessman/investor has to follow proper legal procedures. As noted above, a business must apply for central business registry, trademark registration, and licence registration and extension. Public officials play an important role in each step of the process. For instance, according to Article 31 (2) of the Law on Trade Marks Registration, a public official has the legal authority to fine a businessman double damages, or six months imprisonment for violating the provisions in sub-section 1 of Article 31.<sup>929</sup>

All businesses are required to pay income tax, tax on transfer of shares, tax on rent, and some other fees and taxes. According to Chapter 16 of the Income Tax Law, if a business fails to pay taxes on time, it shall suffer additional taxes and penalties.<sup>930</sup> Additional tax per day is 0.10 per cent of the daily tax due.<sup>931</sup> The legal system gives a key role to public officials in permitting the start-up and operation of private businesses. Despite these regulations, taxpayers can challenge the actions and decisions of the tax authorities. They can refuse to comply with their requests, which may contradict the law. Furthermore, if tax officers misuse their position for direct and indirect personal benefits, their case will be forwarded to the AGO for prosecution.<sup>932</sup>

According to the Constitution “any individual suffering damage without due cause from the state shall appeal to a court for acquisition. Except in conditions stipulated by law, the state shall not, without the order of an authoritative court, claim its rights.”<sup>933</sup> The issues of compensation in Afghanistan are dealt with through internationally accepted rules and regulations. According to Article 28 of the PIL, the state shall:

Provide compensation with the international law and accepted principles equivalent to the fair market-value of the expropriated investment or assets, before the expropriating action is taken. Such compensation shall include the interest at the one year LIBOR rate for the period between the date of the expropriation and the date of complete payment of the compensation. The compensation shall be made in the currency in which the investment was made.<sup>934</sup>

The PIL discusses the issues of compensation for domestic and foreign businessmen. If a foreign investor has over 25 per cent ownership in an enterprise, he/she shall have the right to transfer the compensation out of Afghanistan without tax payment, unless the law orders it otherwise. If a foreign investor has over 25 per cent of ownership and he/she disagrees with the judgement, he/she has the right to take the issue to court.<sup>935</sup> To sum up, both domestic and foreign businessmen are equally given enough independence in terms of compensation.

However, the LACCI, PIL and LBCLLC are silent about complaints mechanisms for businesses to seek redress in case of undue external interference. Nevertheless, in case of interference by public

<sup>929</sup> Ministry of Justice, “Law on Trade Marks Registration”, Official Gazette 995 (1388AH [2009]): Article 31.

<sup>930</sup> Ministry of Justice, “Income Tax Law”, Official Gazette 976 (1387AH [2009]): Articles 99–107.

<sup>931</sup> MoJ, “Income Tax Law”, 2009: Article 101.

<sup>932</sup> MoJ, “Income Tax Law”, 2009: Article 106.

<sup>933</sup> MoJ, “Constitution”, 2004: Article 51.

<sup>934</sup> Ministry of Justice, “Private Investment Law”, Official Gazette 869 (1384AH [2005]): Article 28.

<sup>935</sup> MoJ, “Private Investment Law”, 2005: Article 29.

officials, a businessman can file a complaint against public officials with a relevant association of the ACCI by direct petition.<sup>936</sup> They can also file complaints against public officials with the HOOAC, using the direct petition, email, online form, complaint box or telephone. The complaints unit of each of the public organisations, the civil courts and commercial courts can also be approached, depending upon the nature of the complaint. The commercial courts are the primary forum for contract and commercial disputes, but the lack of professional and trained staff on commercial transactions and disputes<sup>937</sup> does not encourage a businessman to register their complaints with these courts.

**Score: 25**

#### **12.1.4 Independence (practice) – To what extent is the business sector free from unwarranted external interference in its work in practice?**

The legal provisions designed to protect businesses from external interference are not effectively enforced. Corruption is one of the major obstacles standing in the way of the private sector developing. Some of the officials abuse their power to exploit the private sector by creating hurdles for the business community in implementing existing laws, showing corrupt and predatory behaviour, not providing basic services and not implementing pro-business policies.

The percentage of firms expected to give gifts in meetings with the tax inspector is 32 per cent, while the percentage of firms expected to give gifts to secure a government contract is 4 per cent. These percentages are higher than the South Asian region and across low-income countries.<sup>938</sup>

The solicitation of unofficial payments by state officials in dealings with the private businesses is a common phenomenon in Afghanistan, especially at the customs section. According to Sherbaz Kaminzada, Head of the Afghan Industrialists Union, corruption is widespread in customs. He stated that when goods reach customs, customs' officials regularly ask businessmen for bribes. This practice has seriously affected the industrial sector.<sup>939</sup> This assertion is confirmed by New York Times journalist Delcan Walsh. According to his article, *At Afghan Border, Graft Is Part of the Bargain*, "every truck represents a fresh opportunity for personal enrichment. Border guards pocket a small fee for opening the gate, but that is just the start. Businessmen and customs officials collude to fake invoices and manipulate packing lists. Quantity, weight, contents, country of origin — almost every piece of information can be altered to slash the customs bill, often by up to 70 percent."<sup>940</sup>

At the eastern border Torkham, every truck entering through customs represents a chance of bribery for the customs officials. According to one report, a customs official whose government salary is US\$150 can make around US\$4000 in a month by taking bribes from imported goods.<sup>941</sup> Corruption by public officials is also a major administrative and financial burden for firms in Afghanistan. The Director of Business Support and Development at the Afghan Customs Department pointed out that, in cases of corruption at the customs, customs officials and businessmen are both involved. The

<sup>936</sup> Interview with Khan Jan Alokozai, First Vice Chairman of ACCI, Kabul, 27 June 2015.

<sup>937</sup> Au et al., 2011: 83.

<sup>938</sup> The World Bank Group, "Enterprise Surveys; Afghanistan Country Profile 2014," The World Bank Group (2014): 9.

<sup>939</sup> Geeti Mohseni, "Experts Say Customs Agents Are Main Source of Corruption," Tolo News, [www.tolonews.com/en/afghanistan/17509-experts-say-customs-agents-are-main-source-of-corruption](http://www.tolonews.com/en/afghanistan/17509-experts-say-customs-agents-are-main-source-of-corruption) (accessed on 29 June 2015).

<sup>940</sup> Declan Walsh, "At Afghan Border, Graft is Part of the Bargain", The New York Times, 11 November 2014, [www.nytimes.com/2014/11/12/world/asia/in-afghanistan-customs-system-corruption-is-part-of-the-bargain.html?\\_r=0](http://www.nytimes.com/2014/11/12/world/asia/in-afghanistan-customs-system-corruption-is-part-of-the-bargain.html?_r=0) (accessed on 12 August 2015)

<sup>941</sup> Declan Walsh, "At Afghan Border, Graft Is Part of the Bargain", The New York Times, [www.nytimes.com/2014/11/12/world/asia/in-afghanistan-customs-system-corruption-is-part-of-the-bargain.html?\\_r=0](http://www.nytimes.com/2014/11/12/world/asia/in-afghanistan-customs-system-corruption-is-part-of-the-bargain.html?_r=0) (accessed on 29 June 2015).

same source stated that the customs department is trying to bring about reforms and develop a system to determine fake invoices provided by some businessmen at customs.<sup>942</sup>

Corruption is not only a concern at customs. There are also instances where public officials have asked for bribes from businessmen while providing public services. According to the World Bank's 2014 Enterprise Survey, the incidence of graft in Afghanistan in 2014 was 35 per cent, which is higher than the average figure in South Asia and other low-income countries in the world.<sup>943</sup> According to the survey, on average a businessman is asked 35 times per year by public officials to pay bribes to obtain a licence or permit, and solicit other public services.

In the first five months of the current financial year, the Afghan domestic revenue increased by 7 per cent compared with the previous year. According to the Ministry of Finance, "tax on business has not been increased, but businessmen who did not pay taxes have now been registered and asked to pay taxes."<sup>944</sup> Both the businessmen and public officials were involved in not registering businesses and collecting taxes.

The majority of businessmen interviewed for this research stated that filing a complaint with the ACCI or the HOOAC against public officials' or civil servants' illegal intervention in business activities is easy. The process of complaints, though, takes months and in some cases ACCI has even failed to obtain any final result.<sup>945</sup> This forces businessmen to either not file a complaint or pay a bribe to finish their tasks in a timely manner.

## **12.2 GOVERNANCE**

### **Score: 50**

#### **12.2.1 Transparency (law) – To what extent are there provisions to ensure transparency in the activities of the business sector?**

The PIL and LBCLLC have inadequate provisions to ensure transparency in the activities of corporations and LLCs, although the Afghanistan Banking Law (ABL) and the Law on Regulation Telecommunication Services (LRTS) have enough provisions to ensure transparency in the activities of banks and the telecommunication industry. There is no code of conduct that accountants must observe.

According to Article 7 of the LBCLLC, the annual report of corporations and LLCs shall be prepared by an officer or director of the company.<sup>946</sup> However, the law is silent on the format and standards of the report.

Apart from the ABL, there are no explicit provisions in PIL, LBCLLC, MML or LRTS to indicate that the state requires the external audit of any of the mentioned sectors' related businesses. However, according to an expert interview, in accordance with the telecommunications permit, every telecommunication company is required by the state to be audited by external internationally recognised audit companies.<sup>947</sup> Any telecom company which violates the conditions of the work

<sup>942</sup> Interview with Muhammad Umar Momand, Director of Business Support and Development, Customs Department, Ministry of Finance, Kabul, 14 July 2015.

<sup>943</sup> The World Bank Group, "Enterprise Surveys; Afghanistan Country Profile 2014," the World Bank Group (2013):9.

<sup>944</sup> Khwaja Basir Ahmad, "Revenue up by 7 percent: Wolesi Jirga told," Pajhwok News, [www.elections.pajhwok.com/en/2015/06/01/revenue-7-percent-wolesi-jirga-told](http://www.elections.pajhwok.com/en/2015/06/01/revenue-7-percent-wolesi-jirga-told) (accessed on 1 July 2015).

<sup>945</sup> Interview with Dr Abdul Samad Wahaj, CEO of A to Z group of Companies, Kabul, 5 July, and Shirin Qahraman Enterprise, Kabul, 2 July 2015.

<sup>946</sup> MoJ, "Law on Corporations and LLCs", 2007: Article 7.

<sup>947</sup> Interview with an expert from one of the telecommunication industries, name withheld on request, Kabul, 5 July 2015.



permit/licence will be cash fined or its permit will be cancelled by the Ministry of Communications and Information Technology. According to Article 66 (1) of the LRTS, telecommunication companies are required to publish on their websites their permit/licence, registered documents, suggestions, decisions, notifications, agreement letters and other documents, which are not confidential.<sup>948</sup> The publication of the audit report is not mentioned in any of the LRTS articles.

The Central Bank of Afghanistan (Da Afghanistan Bank) is authorised to monitor and supervise the transactions of banks to make sure they are operating within the laws and regulations. According to ABL, each domestic bank shall appoint an independent external auditor, whose qualifications and experience are acceptable to Da Afghanistan Bank.<sup>949</sup> To ensure independence, the auditor shall not be an employee and/or a partner in the bank, or a person who owes debt to the bank.

Each domestic bank is required to submit its consolidated financial audit statements along with the external auditor's report to Da Afghanistan Bank. The report shall also be submitted to the shareholders of the bank no later than three months after the end of the financial year. If required, the bank shall make the reports available to the public.<sup>950</sup> The reports submitted by the banks to Da Afghanistan Bank and by the telecommunication companies to the Ministry of Communications and Information Technology follow International Financial Reporting Standards.

**Score: 50**

#### **12.2.2 Transparency (practice) – To what extent is there transparency in the business sector in practice?**

Information about all registered companies is available online or is made available upon request by the public. The banks and companies prepare and submit reports to the relevant authorities. The data about the registered companies, which includes the company name, licence number, sector, contact details and mailing address, are available on the AISA website.<sup>951</sup> The data about a company's ownership structure is not available online. The details about enterprises, which have ACCI membership and import and export companies registered with the Ministry of Commerce and Industries, can be obtained in hard and soft copies from the respective organisations.

According to Alokozai, businesses submit their financial reports to the Ministry of Finance on a quarterly and annual basis.<sup>952</sup> Reporting standards vary from business to business. Large businesses mostly follow international financial reporting and auditing standards, while other businesses have their own format.

Since there is no explicit auditing law for the private sector, auditing depends upon the structure/nature of a business. Therefore, all businesses are not externally audited. According to the World Bank's Enterprise Survey, only 13 per cent of enterprises' annual financial statements are externally audited. The annual audited percentage of Afghan enterprises is low compared with South Asian countries (46.3 per cent) and other low-income countries (47 per cent).<sup>953</sup> As far as corporations are concerned, an expert from one of the telecommunication companies stated that all telecommunication companies are audited internally on a quarterly basis, externally on an annual basis and the consolidated audit report is submitted to the Ministry of Communications and

<sup>948</sup> Ministry of Justice, "Law on Regulation of Telecommunication Services", Official Gazette 878 (1384AH [2006]): Article 66(1).

<sup>949</sup> Ministry of Justice, "The Afghanistan Banking Law", Official Gazette 819 (1382AH [2004]): Article 43(1).

<sup>950</sup> MoJ, "Banking Law", 2004: Article 44(1).

<sup>951</sup> AISA, "Online Directory," AISA, [www.aisa.org.af/en/AISA/](http://www.aisa.org.af/en/AISA/) (accessed on 3 July 2015).

<sup>952</sup> Interview with Khan Jan Alokozai.

<sup>953</sup> The World Bank Group, "Enterprise Surveys; Afghanistan Country Profile 2014," The World Bank Group (2014): 14.

Information Technology and the Ministry of Finance.<sup>954</sup> But the reports are not published on the companies' websites. The Ministry of Communications and Information Technology first reviews each submitted report and then, in accordance with its reporting standards, publishes them in a consolidated form on its website.<sup>955</sup>

Commercial banks are internally audited by their audit committee and third party verification is conducted by well-known audit companies such as Deloitte, Crowe Horwath, etc., as well as by Da Afghanistan Bank. The reports are submitted to Da Afghanistan Bank according to international financial auditing and reporting standards. The reports are published on the website of each commercial bank for public information.

As far as the question of corporate social responsibility and sustainability is concerned, there are a few large companies, which report about their corporate social responsibility programmes, including the Afghan Wireless Telecommunication Company, Bayat Foundation, Barakat Group of Companies and Etisalat Telecom.<sup>956</sup>

There is no public data available that would indicate the private companies are involved in the anti-corruption campaign. Businesses do not provide any data about any systems and procedures for countering corruption at the national level.

**Score: 75**

### **12.2.3 Accountability (law) – To what extent are there rules and laws governing the oversight of the business sector and governing corporate governance of individual companies?**

There are provisions in the LBCLLC that address corporate governance of individual companies. Corporations are required to have supervisory boards. According to Article 62 of the LBCLLC, the supervisory board can appoint one or more committees, which may have one or more members, to investigate certain matters.<sup>957</sup> The members of supervisory boards are elected by the shareholders at the annual/regular meeting. The relatives of the members of the Board of Directors (e.g. father, mother, brother, son, daughter, uncle, aunt, father-in-law, mother-in-law or son-in-law) cannot be selected as a member of the Board of Supervisors.<sup>958</sup> This is intended to help corporations and LLCs to have accountable and transparent supervisory boards.

Similar to corporations and the LLCs, corporate governance also plays a vital role in banking development. Articles 22 through 26 of the ABL emphasise corporate governance in the banking sector. The articles offer details about the responsibilities of the Board of Supervisors and the Management Board. Furthermore, the articles provide enough details about the primary role of the Board of Supervisors in ensuring the existence of appropriate planning and policies, monitoring the operations, overseeing of financial performance and preventing conflicts of interest in a bank.<sup>959</sup> The corporate governance-related provisions in the ABL and LBCLLC are there to control and direct a corporation's operations.

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<sup>954</sup> Interview with an expert from one of the telecommunication industries, name withheld on request, Kabul, 5 July 2015.

<sup>955</sup> Ministry of Communication and Information Technology, "Performance and Achievements Report; 1381–1393," MoCIT, <http://mcit.gov.af/Content/files/book%20of%20communication.pdf> (accessed on 3 July 2015).

<sup>956</sup> Roshan Telecom, "Roshan Recognized as Company with a Conscience in Afghanistan," Roshan Telecom, [www.roshan.af/roshan/Media\\_Relations/News/News\\_Details/13-02-07/ROSHAN\\_RECOGNIZED\\_AS\\_COMPANY\\_WITH\\_A\\_CONSCIENCE\\_IN\\_AFGHANISTAN.aspx](http://www.roshan.af/roshan/Media_Relations/News/News_Details/13-02-07/ROSHAN_RECOGNIZED_AS_COMPANY_WITH_A_CONSCIENCE_IN_AFGHANISTAN.aspx) (accessed on 3 July 2015).

<sup>957</sup> MoJ, "Law on Corporations and LLCs", 2007: Article 62.

<sup>958</sup> MoJ, "Law on Corporations and LLCs", 2007: Article 63.

<sup>959</sup> MoJ, "Banking Law", 2004: Articles 22–26.

Companies are required to prepare their annual reports. The reports shall be prepared by the senior staff of a company, such as CEO or director. Both foreign and domestic corporations are required to file their annual reports with the Central Registry in accordance with the LBCLLC.<sup>960</sup>

The shareholders have the right to receive copies of the company's financial report. The corporation shall submit the financial report/corporation's book and records to the shareholders 15 days prior to the annual meeting.<sup>961</sup> The prior submission of the report helps the shareholders to investigate financial issues of the corporation. The findings of the financial reports are discussed by the shareholders during their meeting. All the financial reports shall be recorded in a well-organised manner. In addition to keeping the required commercial books, the Board of Directors shall also keep the records of the annual financial statement, which is presented to the shareholders on an annual basis<sup>962</sup> for financial inquiry and management.

Besides the internal reporting system within a Corp and LLC, and the report submissions to the Central Registry, businesses shall also submit their annual reports, and immediately report any change in the company's ownership and capital to AISA. According to the PIL, business enterprise shall submit their annual reports within 90 days to the AISA at the end of every financial year.<sup>963</sup>

Legally, there is no professional and financial regulator overseeing companies in Afghanistan to oversee the business sector.

**Score: 25**

#### **12.2.4 Accountability (practice) – To what extent is there effective corporate governance in companies in practice?**

No data is available from the business sector about the effective implementation of the laws designed for corporate governance. However, there is some data on the implementation of corporate governance laws in the banking sector. Generally, no survey is conducted on the effectiveness of good corporate governance in Afghanistan. The World Economic Forum's Global Competitiveness Report, for example, does not cover Afghanistan. Therefore, it is not possible to determine the level of existing provisions' efficiency in ensuring good corporate governance.

The banks follow their corporate governance provisions. According to the Afghanistan International Bank annual report, the shareholders and Board of Supervisors are committed to a high level of corporate governance. The Board of Supervisors meets on a monthly basis to ensure the bank's financial objective are met. In Afghanistan, the Afghanistan International Bank was declared the winner of the best corporate governance in 2013 by the World Bank.<sup>964</sup>

There is no professional financial regulatory company to oversee private companies' corporate responsibility. In the banking sector, only Da Afghanistan Bank is responsible for overseeing the banks' activities. According to an expert,<sup>965</sup> Da Afghanistan Bank is generally successful in overseeing the activities of the private banks.

<sup>960</sup> MoJ, "Law on Corporations and LLCs", 2007: Article 15(1) and (3).

<sup>961</sup> MoJ, "Law on Corporations and LLCs", 2007: Article 54.

<sup>962</sup> MoJ, "Law on Corporations and LLCs", 2007: Article 56(4).

<sup>963</sup> MoJ, "Private Investment Law", 2005: Article 13.

<sup>964</sup> Afghanistan International Bank, "Annual Report", AIB (2013): 12–16.

<sup>965</sup> Interview with a private bank expert, name withheld on request, Kabul, 4 July 2015.

**Score: 0**

**12.2.5 Integrity mechanisms (law) – To what extent are there mechanisms in place to ensure the integrity of all those acting in the business sector?**

The legal framework contains almost no provisions to ensure integrity in the private sector. Moreover, there is a lack of a sector-wide code of conduct for private businesses. At present, there are no sector-wide codes of conduct or anti-corruption codes for businesses in Afghanistan. According to Alokozai, the private sector's struggle is on-going to develop a code of conduct including anti-corruption codes.<sup>966</sup> The development of a code of conduct would enhance the integrity, fairness and honesty within the private sector, as well as the private sector's dealings with the government and the public.

The LBCLLC and the PIL do not include any provisions on bribery, corruption, receiving or giving gifts, and whistleblowing. However, the LBCLLC contains provisions to avoid conflicts of interest in a company. According to Article 50 (1), if any member of the Board of Directors has a conflict of interest in a business deal, he/she is responsible for disclosing the matter to the Board.<sup>967</sup> This indicates that the members of a Board of Directors are not allowed to gain personal benefits from business dealings under the company name. The laws do not have any provision regarding prohibition of bribery when doing business abroad. Moreover, the laws are silent about large companies having professional chief compliance officers to oversee and manage regulatory compliance related issues within a company.

The Law on Procurement does not have any explicit provisions about programmes for ethics (anti-corruption agreements). However, according to Article 70 of the Procurement Law, a company can be barred from the bidding process by the procurement authority for a minimum of one year and maximum of five years, if it provides false documents and has corrupt procurement/business background.<sup>968</sup> Legally, after the debarment period, a company is allowed to apply for any kind of bidding to any organisation without any restriction.

**Score: 0**

**12.2.6 Integrity mechanisms (practice) – To what extent is the integrity of those working in the business sector ensured in practice?**

There are limited integrity-related legal provisions and a lack of sector-wide codes of conduct; therefore, integrity is not sufficiently practiced. However, in practice, some of the large companies (e.g. banks and telecommunications) have their own code of conduct. The codes of conduct must be explained by a company and signed by an employee before commencing the job, but this procedure is not consistently practiced.<sup>969</sup> The codes of conduct cover the falsification of documents, bribery, engaging in insider trading, etc. Training on integrity issues in the private sector is not a common practice by the companies.

On the other hand, some businessmen are also involved in paying bribes to the government officials in order to easily get done with their dealings.

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<sup>966</sup> Interview with Khan Jan Alokozai.

<sup>967</sup> MoJ, "Law on Corporations and LLCs", 2007: Article 50(1).

<sup>968</sup> MoJ, "Procurement Law", 2008: Article 70(1–2).

<sup>969</sup> Interview with a telecommunication expert, Kabul, 5 July 2015, and with a private bank expert, Kabul, 4 July 2015, names withheld on request.

The private sector is not free from corruption (see independence practice), but the amount is less compared with the public sector. Some private sector officials also solicit gifts/bribes from citizens, while providing them the services at a low cost and in a timely manner. According to a UNODC report, nearly 30 per cent of Afghan citizens have paid a bribe requesting a service from non-public sector in 2012, which is 20 per cent less than the public sector.<sup>970</sup>

There are some mechanisms, such as disciplinary proceedings, punishment, cash fines, salary deductions, demotion and dismissal to stop corruption, the practices of which are more common in the business than in the public sector. However, there is no practice of signing an integrity pact with a company. Most recently, 64 companies were blacklisted by the NPA for providing fake documents for bidding.<sup>971</sup>

## 12.3 ROLE

Score: 0

### 12.3.1 Anti-corruption policy engagement – To what extent is the business sector active in engaging the domestic government on anti-corruption?

The business sector is struggling to engage the National Unity Government into acting on anti-corruption. The ACCI meets the President on a regular basis to find solutions for the challenges with which the private sector is faced. In the meeting held on 18 April 2015 with the President, the ACCI shared the challenges the private sector is facing with Pakistan and Iran. The mechanisms of how to encourage new investments were also discussed.<sup>972</sup> HAKARAT, an entity dealing with business and investment has launched several projects, including the Export Promotion Agency of Afghanistan, Strengthening Fair Competition Project, Capacity-Building within the Afghanistan Institute of Banking and Finance, and Small Taxpayers Office Reform (Kabul Province),<sup>973</sup> which dealt with capacity, transparency and corruption.

Beside insecurity, the deeply rooted system of corruption in Afghanistan is one of the main reasons why investment is not flowing into the country. According to Alokzai, during the meetings with the President the issue of anti-corruption is on the top of the agenda.<sup>974</sup>

In Afghanistan, the UN Global Compact aims to create a sustainable global economy in order to provide benefits to all people. Since 2011 there are 11 different types of businesses, such as services, construction, general industrials and education, which subscribed to the UN Global Compact.<sup>975</sup> So far only Construction & Supplier, Security Services & Transportation Co. Ltd. was expelled from the UN Global Compact list. It was excluded, because it failed to align its strategies with the universal principles on human rights, environment, labour and anti-corruption.

<sup>970</sup> United Nation Office on Drugs and Crime [UNODC], "Corruption in Afghanistan: Recent patterns and integrity challenges in the public sector," (2013): 5.

<sup>971</sup> National Procurement Authority, "List of Debarred Companies," National Procurement Authority, [www.ppu.gov.af/Beta/English/More/LDS.aspx](http://www.ppu.gov.af/Beta/English/More/LDS.aspx) (accessed on 5 July 2015).

<sup>972</sup> ACCI, "ACCI Meets with President Ashraf Ghani," ACCI, [www.acci.org.af/home/38-news/560-acci-meets-with-president-ashraf-ghani.html](http://www.acci.org.af/home/38-news/560-acci-meets-with-president-ashraf-ghani.html) (accessed on 6 July 2015).

<sup>973</sup> HAKARAT, Completed Projects, [www.harakat.af/completed-projects.html](http://www.harakat.af/completed-projects.html) (accessed on 20 August 2015).

<sup>974</sup> Interview with Khan Jan Alokzai.

<sup>975</sup> United Nations Global Compact, "Our participants," United Nations Global Compact, [www.unglobalcompact.org/what-is-gc/participants/search?page=1&search\[keywords\]=&search\[per\\_page\]=10&search\[sort\\_direction\]=asc&search\[sort\\_field\]=country&utf8=%E2%9C%93](http://www.unglobalcompact.org/what-is-gc/participants/search?page=1&search[keywords]=&search[per_page]=10&search[sort_direction]=asc&search[sort_field]=country&utf8=%E2%9C%93) (accessed on 8 July 2015).

**Score: 25**

**12.3.2 Support for/engagement with civil society – To what extent does the business sector engage with/provide support to civil society in its task of combatting corruption?**

The business sector, so far, has not provided financial support to civil society. The joint work of the civil society and the government to combat corruption in the business sector is not adequate. According to ACBAR, which was established in 1988 to form a collective voice of NGOs operating in Afghanistan, there is a lack of trust and good communication between the civil society and the private sector.<sup>976</sup> In addition, the common goals of civil society and the private sector also vary. Despite this, there are a few examples of joint business–civil society initiatives for combatting corruption. In 2013, two programmes were organised jointly by the ACCI and the Afghanistan Investment Climate Facility Organisation – HAKAKAT on anti-corruption and business climate in Herat<sup>977</sup> and Balkh<sup>978</sup> respectively. The aim was to point out the causes of corruption and recommend appropriate solutions.

The private sector has not provided any funding or any kind of financial assistance to civil society in the fight against corruption.

**Recommendations:**

- The legal and regulatory framework regulating business integrity in Afghanistan should be significantly strengthened. The LBCLLC should explicitly prohibit bribery, corruption, and the receiving or giving of gifts, and a sector-wide code of conduct including anti-corruption provisions should be developed for the private sector.
- The government should create an independent taxation and revenue authority to oversee customs and tax revenue collection and reduce the opportunities for state officials to solicit unofficial payments from private businesses.

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<sup>976</sup> Durand, 2015: 67–68.

<sup>977</sup> ACCI, “ACCI and HAKAKAT Organize Business and Anti-Corruption Workshop, Wes Zone”, ACCI, [www.acci.org.af/provincial-chambers/news/351-acci-and-harakat-organize-business-climate-a-anti-corruption-workshop-west-zone.html](http://www.acci.org.af/provincial-chambers/news/351-acci-and-harakat-organize-business-climate-a-anti-corruption-workshop-west-zone.html) (accessed on 10 July 2015).

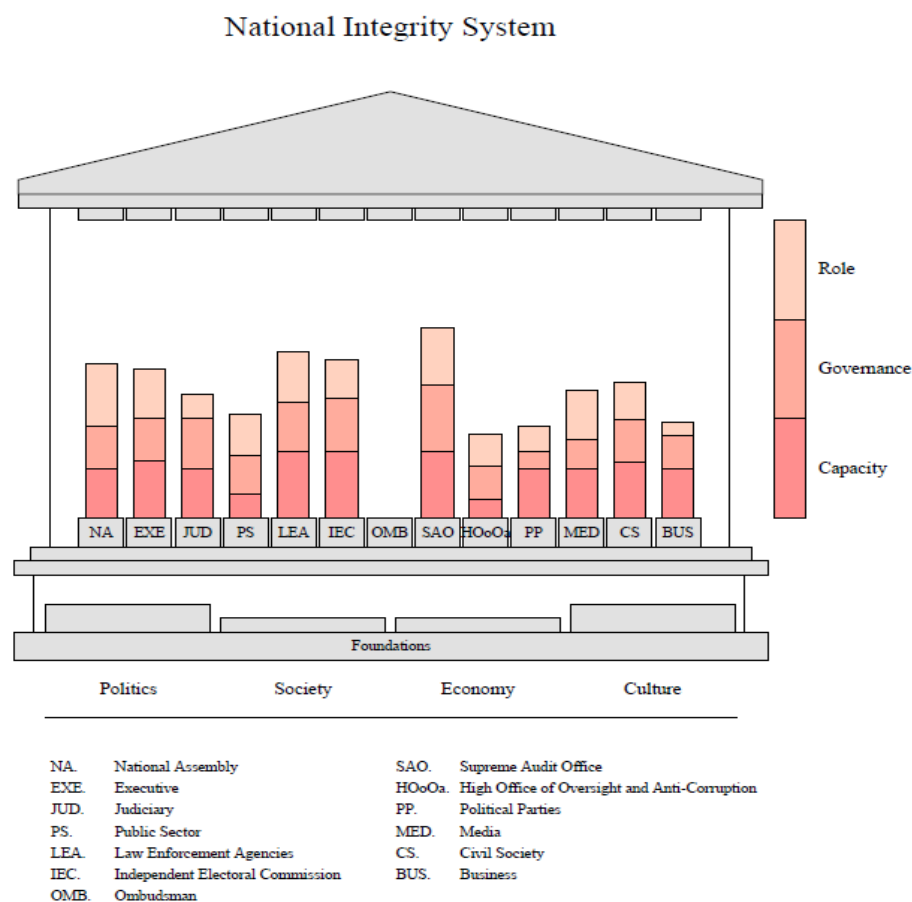
<sup>978</sup> ACCI, “ACCI and Harakat Jointly Organize the Second Business Climate and Anti-Corruption Workshop, North Zone”, ACCI, [www.acci.org.af/provincial-chambers/news/358-acci-and-harakat-jointly-organize-the-second-business-climate-a-anti-corruption-workshop-north-zone.html](http://www.acci.org.af/provincial-chambers/news/358-acci-and-harakat-jointly-organize-the-second-business-climate-a-anti-corruption-workshop-north-zone.html) (accessed on 11 July 2015).



## VII. CONCLUSION

This National Integrity System analysis provides a holistic assessment of Afghanistan's integrity system within the country's cultural, economic, political, and social context. The strengths and weaknesses of the country's key institutions (pillars) have been assessed and the imbalances highlighted. Despite security concerns, a lack of data, difficulties in access to information, and other challenging circumstances in the country, the research team has made every effort to collect a wide range of data and present these in an impartial construct.

Our analysis shows the overall weakness of Afghanistan's National Integrity System. Even though Afghanistan's institutions have a fairly robust legal framework, these institutions are either not able or not willing to translate these laws into practice. This causes a huge gap between law and practice and affects the efficiency, integrity and transparency of almost all institutions.



## STRONGEST PILLARS<sup>979</sup>

Within this weak system, the Supreme Audit Office (SAO) is the strongest pillar. Law Enforcement Agencies (LEAs) is the second strongest pillar followed by the Independent Electoral Commission (IEC), the National Assembly and the Executive.

### Supreme Audit Office

Although its recommendations are often not followed through, the SAO has been able to some extent to enhance fiscal transparency and public accountability and deter inefficiency and corruption, largely thanks to the fact that it rarely succumbs to external political and administrative influence.

### Law Enforcement Agencies

Both the Attorney General's Office (AGO) and the Police Force (PF) have adequate financial resources to carry out their duties effectively, but suffer from a lack of technical and human resources, and professional staff. Furthermore, there are allegations that LEAs, especially the police, are used as an instrument by government officials, the National Assembly, and political and economic forces to serve their interests. In cases of investigation, people associated with the above mentioned authorities are often afforded preferential treatment.

### Independent Election Commission

The IEC has sufficient financial, human, physical, and technical resources to perform its duties independently and free of interference, but operates under the influence of the Executive and the Legislature. There are allegations that government officials have interfered in the election process, and employees and members of IEC have been found to have violated the code of conduct. There is also a lack of regulatory mechanisms to control and regulate candidates' campaign expenses. As a result, candidates are believed to have regularly spent more money in their campaigns than is permitted by law.

### National Assembly

Due to a shortage of human resources and legal, technical, and functional capacities, members of the National Assembly are not able to effectively conduct their duties. There have been many attempts to exert pressure on the National Assembly to conduct its business according to the preferences and desires of the Executive, but the National Assembly has been able in many cases to withstand this pressure. However this tension has created some gridlocks between the Executive and the National Assembly, affecting the activities of the government.

### Executive

The President has the exclusive power to exercise authority over the executive branch. Even though the President as the head of the state is accountable to Wolesi Jirga (Lower House of the National Assembly), both President Karzai and President Ghani have ignored numerous decisions made by Wolesi Jirga. The Executive has enough financial resources to carry out its tasks, but it does not have qualified human resources or sufficient technical capacities to make professional policy and financial management decisions. This is largely because the Executive succumbs to external

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<sup>979</sup> Please refer to the relevant chapters for more detailed information and supporting evidence.

pressure from other government institutions, the National Assembly and the international community and appoints people to important government posts based on nepotism and politics rather than qualifications and expertise.

## WEAKEST PILLARS

At the opposite end of the spectrum, the High Office of Oversight and Anti-Corruption (HOOAC) is the weakest institution in the National Integrity System, followed by political parties, the business sector, the public sector and the judiciary.

### High Office of Oversight and Anti-Corruption (HOOAC)

The HOOAC suffers from weak governing laws, lack of independence, allegations of corruption, and weak leadership capacities. Furthermore, the HOOAC has not impartially and independently fulfilled its mandate, namely to enforce asset declaration and registration processes, to help in corruption investigations and to strengthen case management systems. Also, the HOOAC has not reached out to civil society, the media, and the public to fight corruption and therefore suffers from very low public confidence.

### Political Parties

Political parties are not ideologically based, rather they are associations built around one person or a small group of people with common interests. They are highly centralised and the decision-making process is highly concentrated. Political parties play a very weak role in the political structure of Afghanistan. This weakness stems from the history of political parties in Afghanistan and the constitutional provisions which do not give political parties a formal role in the political system. Citizens tend not to trust political parties because they suffer from a great lack of financial transparency and accountability.

### Business Sector

The legal framework for establishing a new business is very simple and the registration process is simple, quick, and cheap. Legal provisions for protecting private property are also in place. Nevertheless, business as a whole is assessed amongst the weakest pillars in the National Integrity System. External interference by public officials, particularly in custom and tax collection, has enabled public officials to abuse their positions to elicit bribes from the business community. Although there are some laws requiring the business sector to act transparently, overall the legal framework and, in particular, practice is inconsistent in this regard. There is no support within the business community to adopt any kind of self-regulatory mechanisms. This causes suspicion among the public about the integrity of the sector.

### Public Sector

The poor performance of the public sector is partly caused by the centralized system of administration, where budgets, expenditures, the allocation of funds and resources, and service delivery for the capital and the provinces are decided through a centralized decision-making process. Every step of the administrative process has to go through a lengthy multi-step bureaucratic procedure requiring significant resources, and delays are frequent even for urgent issues. The IARCS, responsible for administrative reforms and providing training and services to

civil servants, has not been able to deliver the above mentioned tasks. It lacks human, technical, and functional capacities. The public sector suffers from poor remuneration and weak accountability leading to bribery and corruption. Insufficient financial and human resources and political interference by members of the National Assembly and government ministers have affected the integrity of recruitment procedures of public officials, and ultimately the delivery of services. Even though the rules governing appointments and other areas of the public sector are quite adequate in terms of transparency, they are not always well-practiced by civil servants.

## Judiciary

The Judiciary is also amongst the weakest pillars of the National Integrity System. Despite the formal separation of powers and independence awarded by Article 116 of the Constitution, the Judiciary is seen as being driven and manipulated by both the Executive and the National Assembly. The decisions of the Judiciary, especially those related to government officials and members of the Legislature and the economic elite, are considered to be biased in their favour. Moreover, even though the salaries of Judges are ten times higher than that of an average civil servant (the Supreme Court judges receive a salary close to that of the Vice-President), the Judiciary is perceived as the most corrupt institution in the country. The Supreme Court does not play any instrumental role in ensuring checks and balances between the different institutions of the state, because it does not have the authority to review the actions and decisions of the Executive and the Legislature.

## Media

Even though Afghan media laws are supportive of a free and independent media, this does not translate into practice. State agencies have violated these laws to attempt to control the media, but journalists have often managed to resist these infringements. Nevertheless, the Afghan media exercises a degree of self-censorship in sensitive issues dealing with religion and ethnicity for fear of backlash by the Government. The Afghan media is sensationalist rather than investigative. The media does report on government corruption, but stops short of investigating the causes of corruption and exposing the people involved. It rather satisfies itself with descriptive reporting.

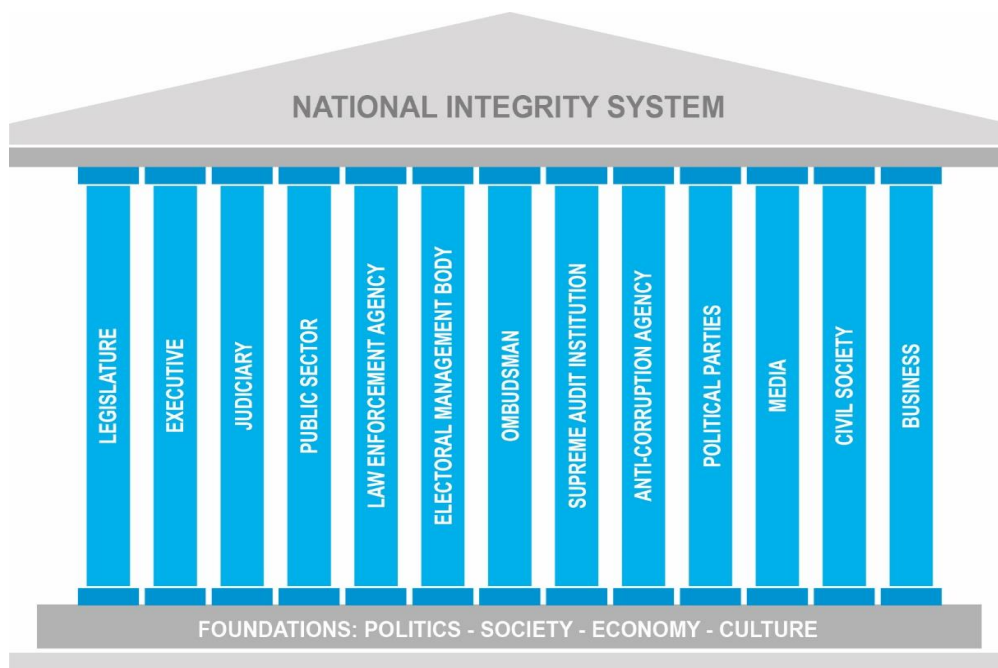
## Civil Society

Civil society remains amongst the weaker pillars of the National Integrity System. Civil society generally works in the areas of service delivery, rural development, and to some extent anti-corruption, and has had some success in promoting human rights, women rights and electoral transparency. It also tries to exert pressure on governance actors to comply with democratic norms and practices, and plays a positive role in holding the government accountable for its actions. However, the lack of capacity within civil society organisations to have a sustained impact in these areas is an ongoing concern.

# VIII. ABOUT THE NATIONAL INTEGRITY SYSTEM ASSESSMENT

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The National Integrity System (NIS) assessment approach used in this report provides a framework to analyse both the vulnerabilities of Afghanistan to corruption as well as the effectiveness of its national anti-corruption efforts. The framework includes all principal institutions and actors that form the state. These include all branches of government, the public and private sector, the media, and civil society (the 'pillars' as represented in the diagram below). The concept of the National Integrity System has been developed and promoted by Transparency International as part of its holistic approach to fighting corruption. While there is no blueprint for an effective system to prevent corruption, there is a growing international consensus as to the salient institutional features that work best to prevent corruption and promote integrity. To date, the NIS assessment has been conducted in more than seventy countries. In some countries it has been conducted several times to evaluate the improvement in the national integrity system of a given country. This is the first time, the NIS assessment has been conducted in Afghanistan.



A National Integrity System assessment is a powerful advocacy tool that delivers a holistic picture of a country's institutional landscape with regard to integrity, accountability and transparency. A strong and functioning National Integrity System serves as a bulwark against corruption and guarantor of accountability, while a weak system typically harbours systemic corruption and produces a myriad of

governance failures. The resulting assessment yields not only a comprehensive outline of reform needs, but also a profound understanding of their political feasibility. Strengthening the National Integrity System promotes better governance across all aspects of society and, ultimately, contributes to a more just society.

## DEFINITIONS

The definition of ‘corruption’, which is used by Transparency International is as follows:

‘The abuse of entrusted power for private gain. Corruption can be classified as grand, petty and political, depending on the amounts of money lost and the sector where it occurs.’<sup>980</sup>

‘Grand corruption’ is defined as ‘Acts committed at a high level of government that distort policies or the functioning of the state, enabling leaders to benefit at the expense of the public good.’<sup>981</sup> ‘Petty corruption’ is defined as ‘Everyday abuse of entrusted power by low- and mid-level public officials in their interactions with ordinary citizens, who often are trying to access basic goods or services in places like hospitals, schools, police departments and other agencies.’<sup>982</sup> ‘Political corruption’ is defined as ‘Manipulation of policies, institutions and rules of procedure in the allocation of resources and financing by political decision makers, who abuse their position to sustain their power, status and wealth.’<sup>983</sup>

## OBJECTIVES

The key objectives of the National Integrity System assessment in Afghanistan are to generate:

- An improved understanding of the strengths and weaknesses of Afghanistan’s National Integrity System within the anti-corruption community and beyond.
- A momentum among key anti-corruption stakeholders for addressing priority areas in the National Integrity System.

The primary aim of the assessment is therefore to evaluate the effectiveness of Afghanistan’s institutions in preventing and fighting corruption and in fostering transparency and integrity. In addition, it seeks to promote the assessment process as a springboard for action among the government and anti-corruption community in terms of policy reform, evidence-based advocacy or further in-depth evaluations of specific governance issues. This assessment should serve as a basis for key stakeholders in Afghanistan to advocate for sustainable and effective reform.

## METHODOLOGY

In Transparency International’s methodology, the National Integrity System is formed by 13 pillars representing all key public and private institutions in a country. However, in the context of

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<sup>980</sup> The Anti-Corruption Plain Language Guide, Transparency International, 2009, p.14.

<sup>981</sup> [http://www.transparency.org/whatwedo/pub/the\\_anti\\_corruption\\_plain\\_language\\_guide](http://www.transparency.org/whatwedo/pub/the_anti_corruption_plain_language_guide) [accessed 21 December 2012].

<sup>982</sup> Ibid., p.23.

<sup>983</sup> Ibid., p.33.

<sup>984</sup> Ibid. p.35.



Afghanistan, the institution of the ombudsman does not exist. Therefore, the study has been conducted on twelve (12) pillars as presented in this report.

CORE GOVERNANCE INSTITUTIONS	PUBLIC SECTOR AGENCIES	NON-GOVERNMENTAL ACTORS
Legislature	Public sector	Political parties
Executive	Law enforcement agencies	Media
Judiciary	Electoral management body	Civil society
	Supreme audit institution	Business
	Anti-corruption agency	

Each of the 12 pillars is assessed along three dimensions that are essential to its ability to prevent corruption:

- its overall capacity, in terms of resources and independence
- its internal governance regulations and practices, focusing on whether the institutions in the pillar are transparent, accountable and act with integrity
- its role in the overall integrity system, focusing on the extent to which the institutions in the pillar fulfill their assigned role with regards to preventing and fighting corruption

Each dimension is measured by a common set of indicators. The assessment examines for every dimension both the legal framework of each pillar as well as the actual institutional practice, thereby highlighting any discrepancies between the formal provisions and reality in practice.

DIMENSION	INDICATORS (LAW AND PRACTICE)
Capacity	Resources Independence
Governance	Transparency Accountability Integrity
Role within governance system	Pillar-specific indicators

The assessment does not seek to offer an in-depth evaluation of each pillar. Rather it seeks breadth, covering all relevant pillars across a wide number of indicators in order to gain a view of the overall system. The assessment also looks at the interactions between pillars, as weaknesses in a single institution could lead to serious flaws in the entire system. Understanding the interactions between pillars helps to prioritise areas for reform.

In order to take account of important contextual factors, the evaluation is embedded in a concise analysis of the overall political, social, economic and cultural conditions – the ‘foundations’ – in which the 12 pillars operate.

The National Integrity System assessment is a qualitative research tool. It is guided by a set of ‘indicator score sheets’ developed by Transparency International. These consist of a ‘scoring

question' for each indicator, supported by further guiding questions and scoring guidelines. The following scoring and guiding questions, for the resources available in practice to the judiciary, serve as but one example of the process:

PILLAR	Judiciary
INDICATOR NUMBER	3.1.2
INDICATOR NAME	Resources (practice)
SCORING QUESTION	To what extent does the judiciary have adequate levels of financial resources, staffing and infrastructure to operate effectively in practice?
GUIDING QUESTIONS	Is the budget of the judiciary sufficient for it to perform its duties? How is the judiciary's budget apportioned? Who apportions it? In practice, how are salaries determined (by superior judges, constitution, law)? Are salary levels for judges and prosecutors adequate or are they so low that there are strong economic reasons for resorting to corruption? Are salaries for judges roughly commensurate with salaries for practising lawyers? Is there generally an adequate number of clerks, library resources and modern computer equipment for judges? Is there stability of human resources? Do staff members have training opportunities? Is there sufficient training to enhance a judge's knowledge of the law, judicial skills including court and case management, judgment writing and conflicts of interest?
MINIMUM SCORE (1)	The existing financial, human and infrastructural resources of the judiciary are minimal and fully insufficient to effectively carry out its duties.
MID-POINT SCORE (3)	The judiciary has some resources. However, significant resource gaps lead to a certain degree of ineffectiveness in carrying out its duties.
MAXIMUM SCORE (5)	The judiciary has an adequate resource base to effectively carry out its duties.

The guiding questions, used by Transparency International worldwide, for each indicator were developed by examining international best practices, as well as by using our own experience of existing assessment tools for each of the respective pillars, and by seeking input from experts on the respective institutions. These indicator score sheets provide guidance for the assessment, but when appropriate the lead researcher has added questions or left some questions unanswered, as not all

aspects are relevant to the national context. The full toolkit with information on the methodology and score sheets are available on the Transparency International website.<sup>984</sup>

To answer the guiding questions, the research team relied on four main sources of information: national legislation, secondary reports and research, interviews with key experts, and written questionnaires. Secondary sources included reliable reporting by national civil society organisations, international organisations, governmental bodies, think tanks and academia.

To gain an in-depth view of the current situation, a minimum of two key informants were interviewed for each pillar – at least one representing the pillar under assessment, and one expert on the subject matter but external to it. In addition, more key informants that is people ‘in the field’, were interviewed. Professionals with expertise in more than one pillar were also interviewed in order to get a cross-pillar view.

All in all, for this NIS assessment and analysis, the research team interviewed 48 experts, including current and former ministers, MPs, high ranking government officials, university professors, journalists, and civil society activists. Such a diverse composition including high ranking officials helped the research team to reach a broader assessment of Afghanistan’s integrity system. Nevertheless, there were a number of challenges and opportunities in conducting key informant interviews. The representatives of the Judiciary and the Executive did not want to speak on the record about their institutions. However, the research team did manage to interview one judge who requested to remain anonymous. In the Executive branch the researchers interviewed a former minister regarding the internal working of the cabinet. On the other hand, the research team interviewed eight experts for the political parties’ pillar. This number is associated with the large number of political parties in Afghanistan. Six interviews were conducted within the media sector. A full list of the interviewees is contained in the bibliography.

## THE SCORING SYSTEM

While this is a qualitative assessment, numerical scores are assigned in order to summarise the information and to help highlight key weaknesses and strengths of the integrity system. Scores are assigned on a 100-point scale in 25-point increments including five possible values: 0, 25, 50, 75 and 100. The scores prevent the reader getting lost in the details and promote reflection on the system as a whole, rather than focusing only on its individual parts. Indicator scores are averaged at the dimension level, and the three dimensions scores are averaged to arrive at the overall score for each pillar, which provides a general description of the system’s overall robustness.

VERY STRONG	100
STRONG	75
MODERATE	50
WEAK	25
VERY WEAK	0

<sup>984</sup> [www.transparency.org/policy\\_research/nis/methodology](http://www.transparency.org/policy_research/nis/methodology).

The scores are not suitable for cross-country rankings or other quantitative comparisons, due to differences in data sources across countries applying the assessment methodology and the absence of an international review board tasked to ensure comparability of scores.

## Consultative approach and validation of findings

The assessment process in Afghanistan had a strong consultative component, seeking to involve the key anti-corruption actors in government, civil society and other relevant sectors. This approach had two aims: to generate evidence and to engage a wide range of stakeholders with a view to building momentum, political will and civic demand for reform initiatives. The consultative approach had four major parts: Advisory Group, an NIS Seminar, Transparency Forums, and the NIS Workshop.

The Advisory Group (AG) advised the research team on the main aspects of project implementation and validated the NIS scores. The Advisory Group consisted of a total of 8 experts from government, civil society and the donor community present in Kabul. Although the NIS toolkit requires each country to have at least two meetings of the Advisory Group, one at the beginning and one at the end, Integrity Watch Afghanistan organized four Advisory Group meetings. Prior to each Advisory Group meeting, the draft pillars were shared in advance with the members of the AG. The research team presented the findings and the scores at the meetings and incorporated the participants' comments and suggestions, and changed some scores according to the recommendations of the AG.

To familiarise the high ranking government officials with the NIS and receive their input and recommendations, a NIS Seminar was held on 6 May 2015. Two dozen officials representing different government agencies including, but not limited to, the HOOAC, IARCSC, NPA, an Ex-Supreme Court Judge, and the Ministry of Justice participated. The research team presented different aspects of the NIS including its methodology, and explained how the NIS recommendations have contributed to improve governance in other countries.

To validate the recommendations of the NIS assessment by the government, civil society, the private sector, and the donor community, a NIS Workshop was held for two days on 3 and 4 October 2015. Stakeholders from various government institutions, non-government organisation, the private sector, and media participated in the NIS Workshop in which the research team presented a summary of the research findings and requested the participants to validate the recommendations. The NIS Workshop participants discussed, amended and finally agreed upon a set of recommendations for each pillar. The recommendations are presented at the end of each of the twelve pillars.

In order to raise the stakeholders' awareness prior to and after the publication of the Afghanistan NIS report and build momentum for advocacy around NIS recommendations, four Transparency Forums have been planned. In the first Transparency Forum held on 16 March 2015, around three dozen experts representing government officials, civil society, private sector, and donor community discussed and agreed on a set of recommendations about public procurement and institutional arrangements for fighting corruption to be submitted to the National Unity Government. The second Transparency Forum took place in November 2015 and the remaining two Transparency Forums are due to be held in 2016.

## PUBLIC OPINION SURVEY

To complement the data collection, a survey was conducted in May and June 2015 to gauge the general public's perception about corruption. The intention was to find out whether the National Unity Government, which took office in September 2014, was perceived to have successfully fought corruption and to have brought positive changes to the lives of people. Over one thousand people from diverse economic, ethnic, and social backgrounds answered the 10-question questionnaire.

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